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CIVIL AND POLITICAL RIGHTS INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

Report of the newly appointed Special Rapporteur on torture, Mr. Theo van Boven

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* The annex is reproduced in the original language only.

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Introduction

1. The mandate of the Special Rapporteur on torture, assigned since April 1993 to Sir Nigel Rodley (United Kingdom), was renewed for three more years by the Commission on Human Rights in its resolution 2001/62. By letter dated 15 October 2001, Sir Nigel submitted to the Chair of the fifty-seventh session of the Commission his resignation as Special Rapporteur, to take effect as from 12 November 2001.[1] By letter dated 28 November 2001, the Chair, after consultations with the Bureau, appointed Theo van Boven (The Netherlands) as Special Rapporteur on torture.

2. In conformity with resolution 2001/62, the newly appointed Special Rapporteur hereby presents his first report to the Commission. The present report, brief in scope and content, reflects the early activities of the new Special Rapporteur in accordance with the mandate entrusted to him. It is issued in addition to the documents submitted by his predecessor (E/CN.4/2002/76 and Add.1).

I. MANDATE AND METHODS OF WORK

3. The Special Rapporteur adheres to the principle of continuity in the discharge of the mandate conferred to him in accordance with the relevant resolutions of the Commission on Human Rights. Thus, he continues to be guided by the methods of work described in the annex to document E/CN.4/1997/7 which have been approved most recently by the Commission in resolution 2001/62 (para. 30).

4. The main activities of the Special Rapporteur continue to be:

(a) Seeking and receiving credible and reliable information from Governments, the specialized agencies and intergovernmental and non-governmental organizations;

(b) Making urgent appeals to Governments to clarify the situation of individuals whose circumstances give grounds to fear that treatment falling within the Special Rapporteur's mandate might occur or to be occurring;

(c) Transmitting to Governments information of the sort mentioned in (a) above indicating that acts falling within his mandate may have occurred or that legal or administrative measures are needed to prevent the occurrence of such acts;

(d) Carrying out visits in situ with the consent of the Government concerned.

5. In particular, the Special Rapporteur has continued at the outset to seek cooperation from holders of other Commission mandates, with a view to arriving at concerted action and avoiding duplication of activity in respect of country-specific initiatives. Similarly, the Special Rapporteur intends to continue cooperating with human rights mechanisms particularly

relevant to his mandate, such as the Committee against Torture, the Human Rights Committee, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Commission on Crime Prevention and Criminal Justice. In this respect, he is mindful of the complementary nature of the mandates and activities of the various bodies that combat practices of torture and that provide redress and rehabilitation to torture victims.

6. The Special Rapporteur intends to pay particular attention to follow-up activities which are indispensable in any human rights promotion and protection system. He believes that such follow-up activities with respect to individual cases and specific situations (urgent appeals and allegations) and recommendations of a general nature or made in relation to visits in situ are crucial, in particular in order to make the activities under his mandate more effective. The Special Rapporteur notes that, owing to a lack of resources, such activities have in the past not reached the level that is needed. He therefore hopes that, in the future, sufficient resources will become available to meet the essential requirements of his mandate. It is evident that in all circumstances the effective cooperation of States is a necessary condition for the successful implementation of the mandate.

7. The Special Rapporteur would like to use this occasion to associate himself fully with the recommendations his predecessor included in his last report to the General Assembly (A/56/156, para. 39). He expresses the profound hope that States and other interested national and international actors will examine the 12 recommendations carefully and make every effort to follow them up and implement them.

The non-derogability of the prohibition of torture and cruel, inhuman or degrading treatment or punishment

8. In submitting his first report to the Commission, the Special Rapporteur deems it necessary to underline one particular aspect of the prohibition of torture and cruel, inhuman and degrading treatment or punishment, namely, the non-derogable nature of this prohibition. It may be argued that putting emphasis on this issue is to state the obvious and that it is too well-known to all who are familiar with the precepts and principles of international human rights and humanitarian law to reiterate. Nevertheless, at a time when in the name of upholding and defending national and international security interests, the enjoyment of human rights and fundamental freedoms risks being subject to erosion, it is not redundant to recapture and reaffirm the basics of human rights protection and notably to re-emphasize that certain rights cannot be derogated from under any circumstances, including in times of public emergency. This concern was also a constituent element of the statement issued on the Human Rights Day (10 December 2001) by 17 independent experts of the Commission on Human Rights.[2]

9. The 1966 International Covenant on Civil and Political Rights consecrates the imperative and non-derogable nature of the prohibition of torture and other forms of ill-treatment by not allowing any derogation from article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), even in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.[3] In that respect, the Special Rapporteur draws the Commission's attention to the close interconnection of certain provisions of the Covenant that have a bearing on the scope of the principle of non-derogability. Thus, the Human Rights Committee's General Comment

No. 29 on derogations from the provisions of the Covenant during a state of emergency states that "[i]n those provisions of the Covenant that are not listed in article 4, paragraph 2, there are elements that in the Committee's opinion cannot be made subject to lawful derogation under article 4". Among the illustrative examples presented, it is stated by the Human Rights Committee that: "(a) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Although this right, prescribed in article 10 of the Covenant, is not separately mentioned in the list of non-derogable rights in article 4, paragraph 2, the Committee believes that here the Covenant expresses a norm of general international law not subject to derogation. This is supported by the reference to the inherent dignity of the human person in the preamble to the Covenant and by the close connection between articles 7 and 10."

10. With no significant variations in wording, the three human rights instruments of regional applicability, the 1950 European Convention on Human Rights, the 1969 American Convention on Human Rights and the 1981 African Charter on Human and Peoples' Rights, prohibit torture and other forms of ill-treatment in terms similar to those of article 7 of the International Covenant on Civil and Political Rights. In the case of the European and American Conventions, a parallel with the Covenant is also maintained with regard to the non-permissibility of derogations from the prohibition.

11. The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 3452 (XXX) of 9 December 1975, similarly provides that "[n]o State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment".[4] A similar provision is restated in article 2, paragraph 2 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[5]

12. International humanitarian law affirms the same basic notions. With respect to prisoners of war, the 1949 Geneva Convention relative to the Treatment of Prisoners of War (the Third Geneva Convention) provides that "[p]risoners of war must **at all times** be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention .... Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited"[6] and that "[p]risoners of war are entitled **in all circumstances** to respect for their persons and their honour."[7] With respect to interrogation, the Third Geneva Convention further provides that "[n]o physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind."[8] Furthermore, it must be noted that, according to article 130 of the Third Geneva Convention, acts of "torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health" against persons protected by the Convention are considered as grave breaches of the Convention, requiring the High Contracting Parties to take specific legal and

enforcement measures in the area of criminal law and procedure. A similar provision is included in article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention). Moreover, the 1977 Protocol Additional to the Geneva Conventions relative to the Protection of Victims of International Armed Conflicts (Protocol I) prescribes amongst fundamental guarantees that "persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely **in all circumstances**".[9] Furthermore, among the acts which "are and shall remain prohibited **at any time and any place whatsoever**, whether committed by civilian or be military agents", are listed: "(a) violence to the life, health, or physical or mental well-being of persons, in particular: (i) murder; (ii) torture of all kinds, whether physical or mental; (iii) corporal punishment; and (iv) mutilation; (b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault; … (d) collective punishments; and (e) threats to commit any of the foregoing acts."[10]

13. With respect to non-international armed conflicts, the Special Rapporteur draws the attention of the Commission in particular to common article 3 of the 1949 Geneva Conventions, which has sometimes been described as a "mini-convention" in itself. Common article 3 provides that "[i]n the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall **in all circumstances** be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited **at any time and in any place whatsoever** with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; … (c) outrages upon personal dignity, in particular, humiliating and degrading treatment" (emphasis added). Further, the 1977 Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) provides amongst fundamental guarantees that "[a]ll persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall **in all circumstances** be treated humanely, without any adverse distinction. … the following acts against the persons referred to [above] are and shall remain prohibited **at any time and in any place whatsoever**: (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; (b) collective punishments; … (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; … (h) threats to commit any of the foregoing acts".[11]

14. In addition, the Special Rapporteur would like to underline the link between the non-derogable nature of the prohibition of torture and other forms of ill-treatment and the principle of *non-refoulement*. The Human Rights Committee, in its General Comment 20 on article 7 of the 1966 International Covenant on Civil and Political Rights, has stated that State Parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or *refoulement*".

Similarly, article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that "[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". It is submitted that the principle contained in the Human Rights Committee's statement and the above provision of the Convention against Torture represents an inherent part of the overall fundamental obligation to avoid contributing in any way to a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. It must be emphasized that the protection offered by the principle of *non-refoulement* is of an imperative nature. In this regard, the Special Rapporteur notes the findings of the Committee against Torture to the effect that "the nature of the activities in which the person engaged is not a relevant consideration in the taking of a decision in accordance with article 3 of the Convention"[12] and that article 3 applies "irrespective of whether the individual concerned has committed crimes and the seriousness of those crimes".[13]

15. This review of the non-derogability of the prohibition of torture and cruel, inhuman or degrading treatment or punishment can no better be summed up than by quoting the following repeated and unambiguous pronouncement of the Commission: "*condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, which can never be justified under any circumstances whatsoever".[14] The Special Rapporteur concludes that the legal and moral basis for the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute and imperative and must under no circumstances yield or be subordinated to other interests, policies and practices.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

16. The Special Rapporteur continues, like his predecessor, to receive information concerning the situation of individuals who are reportedly at risk of being tortured or being subjected to other forms of ill-treatment. Since his appointment, the Special Rapporteur has followed the established practice of sending, either in his own name or in appropriate cases jointly with other holders of Commission mandates, urgent appeals seeking clarification of the situation of the persons concerned and requesting the authorities to take the necessary measures to ensure that the persons concerned are treated humanely.

17. With respect to requests for visits in situ, the Special Rapporteur, taking into account requests made earlier by his predecessor, expressed in letters dated 25 January 2002 his interest in undertaking such visits, within the framework of his mandate, to the following countries: Algeria, Egypt, Georgia, India, Indonesia, Israel, Nepal, the Russian Federation with respect to the Republic of Chechnya, Tunisia and Uzbekistan. He also responded with interest to invitations received by his predecessor from the Governments of Bolivia, Equatorial Guinea and Togo, as well as the invitation reiterated to him by the Government of China.

18. In paragraph 9 of its resolution 2001/62, the Commission on Human Rights requested the Special Rapporteur to study the situation of trade and production in equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms, with a view to finding the best ways to prohibit such trade and production and to combat its proliferation, and report thereon to the Commission. Accordingly, on

7 August 2001, a note verbale was sent by the Secretariat to all Permanent Missions to the United Nations Office at Geneva, to international organizations and to relevant intergovernmental and non governmental organizations. At the time of writing, information and comments have been received from the following Governments: Argentina, Bahrain, Belarus, Colombia, Cuba, and Tunisia; as well as from the following non-governmental organizations: Amnesty International and the Omega Foundation. The Special Rapporteur is fully aware of the importance of the study requested. He believes that further information is needed to allow him to carry out this study effectively. In this regard, it is relevant to note that the first Special Rapporteur on torture, Peter Kooijmans, in his first report to the Commission on Human Rights recognized that numerous countries produce and export instruments specifically designed to inflict torture.[15] The Special Rapporteur would welcome further information on this issue from governmental and non-governmental sources.

19. On 22 January 2002, the Special Rapporteur addressed the fifty-eighth session of the pre-sessional open-ended working group on the question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Notes

[1] The summary of activities carried out by the Special Rapporteur in 2000 and of communications sent by the Special Rapporteur from 15 December 2000 to 12 November 2001, the date of his resignation from the mandate, and replies received thereto from Governments from 15 December 2000 to 1 December 2001 may be found in documents E/CN.4/2002/76 and E/CN.4/2002/76/Add.1.

[2] For ease of reference, annex I to this report reproduces the press release issued on 10 December 2001 by 17 independent experts.

[3] Article 4.

[4] Article 3.

[5] Article 2, paragraph 2 reads as follows: "[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture".

[6] Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949, article 13 (emphasis added).

[7] Ibid., article 14 (emphasis added).

[8] Ibid., article 17.

[9] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, article 75 (emphasis added).

[10] Ibid.

[11] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, article 4 (emphasis added).

[12] Seid Mortesa Aemei v Switzerland (Communication No. 34/1995, 9 May 1997), paragraph 9.8.

[13] M.B. B. v Sweden (Communication No. 104/1998, 5 May 1999), paragraph 6.4.

[14] See, inter alia, Commission resolution 2001/62, paragraph 1.

[15] See E/CN.4/1986/15, paragraphs 120-121.

Annex

MESSAGE BY 17 INDEPENDENT EXPERTS OF THE COMMISSION ON HUMAN RIGHTS ON THE OCCASION OF HUMAN RIGHTS DAY, 10 DECEMBER 2001

Human Rights Day: Independent experts remind States of their obligation to uphold fundamental freedoms

"On the occasion of the United Nations Human Rights Day, the undersigned independent experts of the Commission on Human Rights strongly remind States of their obligation under international law to uphold human rights and fundamental freedoms in the context of the aftermath of the tragic events of 11 September 2001.

"We express our deep concern over the adoption or contemplation of anti-terrorist and national security legislation and other measures that may infringe upon the enjoyment by all of human rights and fundamental freedoms. We deplore human rights violations and measures that have particularly targeted groups such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media. Concerned authorities have already been requested to take appropriate actions to guarantee the respect for human rights and fundamental freedoms in a number of individual cases drawn to the attention of relevant independent experts. We shall continue to monitor the situation closely.

"We remind States of the fundamental principle of non-discrimination which guarantees that everyone is entitled to all rights and freedoms 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (article 2 of the Universal Declaration on Human Rights). We also remind States that under international human rights law some rights cannot be derogated from under any circumstances, including in times of public emergency. These include: the right to life, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, freedom of thought, conscience and religion, as well as the principles of precision and non-retroactivity of criminal law except where a later law imposes a lighter penalty. Furthermore, we call upon States to take appropriate measures to uphold respect for fundamental rights such as the right to liberty and security of person, the right to be free from arbitrary arrest, the presumption of innocence, the right to a fair trial, the right to freedom of opinion, expression and assembly, and the right to seek asylum.

"We call upon States to limit the measures taken to the extent strictly required by the exigencies of the situation. Public policies must strike a fair balance between on the one hand the enjoyment of human rights and fundamental freedoms by all and on the other hand legitimate concerns over national and international security. The fight against terrorism must not result in violations of human rights as guaranteed under international law."

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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Letter dated 15 October 2001 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to transmit herewith my remarks and comments on paragraphs 5 to 10 of the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, submitted pursuant to Commission on Human Rights resolution 2000/14 (E/CN.4/2001/21) submitted to the Commission on Human Rights at its fifty-seventh session. These remarks and comments were also sent to Mr. Maurice Glèlè-Ahanhanzo, the Special Rapporteur.

I would be grateful if you could circulate the attached remarks and comments* to all the members of the Commission as an official United Nations document under Item 6 of the agenda of the fifty-eighth session of the Commission on Human Rights, entitled "Racism, racial discrimination, xenophobia and all forms of discrimination".

(Signed) Najat AL-HAJJAJI
Ambassador
Permanent Representative

* Reproduced in the annex as received, in the original language and Arabic, and French, only.

Annex

The Permanent Mission of the Great People's Socialist Libyan Arab Jamahiriya to the United Nations Office at Geneva and the Other International Organizations in Switzerland

I have the honour to refer to paragraphs 5, 6, 7, 8, 9 and 10 of the report by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, which was submitted pursuant to Commission on Human Rights resolution 2000/14 and contained in document E/CN.4/2002/21.

Mr. Ahanhanzo presented the report to the Commission at its fifty-seventh session (held at Geneva from 18 March to 27 April 2001) under item 6 of the provisional agenda entitled: "Racism, racial discrimination, xenophobia and all forms of discrimination".

In the aforementioned paragraphs, Mr. Ahanhanzo, on the basis of newspaper, radio and television reports, refers to incidents which he characterizes as racist and xenophobic that occurred in the Jamahiriya in September 2000.

In spite of the dialogue which I personally had with Mr. Ahanhanzo during the most recent (the fifty-fifth) session of the United Nations General Assembly, specifically on the occasion of a meeting of the Third Committee on 18 October 2000, when I explained, inter alia, the reasons for the outbreak of the incidents between Libyan citizens and certain African nationals in a district of Tripoli, and also in spite of the very clear response which I provided to the Special Rapporteur's request for clarification during an interview which I had with him, at his request, at the Palais Wilson at Geneva on 12 December 2000, and in spite of the formal letter which I sent to the esteemed Special Rapporteur on 3 January 2001 responding to Mr. Ahanhanzo's questions concerning the measures taken by the competent Libyan authorities in the aftermath of the incidents in question, Mr. Ahanhanzo has persisted in relying on and reproducing press reports in the aforementioned report.

Under the circumstances, I have no choice but to make the following comments and observations in response to the aforementioned paragraphs of the Special Rapporteur's report:

1. The Special Rapporteur has indicated that his information is based on reports by the written and audio-visual media. He has also cited extracts from articles that appeared in

certain newspapers. With all due respect to all media, Mr. Ahanhanzo ought to know that the information which the media provide cannot be used as the only source for a report by a Special Rapporteur of the Commission on Human Rights, particularly when some of the media in question have taken a hostile stance towards my country.

2. In spite of my assurances to the Special Rapporteur that the incidents in question were nothing more than a brawl between Libyan citizens and a number of Africans and that they constituted a form of criminal behaviour that could equally well occur between Libyan citizens or the African nationals themselves, Mr. Ahanhanzo insisted upon endowing the incidents with a racist and xenophobic character, which surprises us greatly.

3. I should like to assure the Special Rapporteur that the arrangements for the expulsion of the African nationals concerned were made in full cooperation with their countries of origin, through their accredited embassies in the Jamahiriya, in response to the express wishes of those nationals voluntarily to leave Libya, where their illegal presence and failure to secure employment had caused them a variety of problems. The Jamahiriya undertook to bear the costs of their repatriation, which have thus far amounted to US$ 60 million.

4. The investigation to identify those responsible for these incidents was entrusted to the Office of the People's Prosecutor, which has concluded its investigation. The case has been brought before a People's Court and is currently being heard by one of its chambers. The total number of suspects, both Libyans and African nationals, amounts to 331. The trial is being held in open court, broadcast live on the Libyan satellite channel and attended by accredited diplomats to the Jamahiriya and the correspondents of all newspapers and news agencies.

5. In that regard, I should like to remind the Special Rapporteur that my country, the Jamahiriya, is wholly committed to honouring its obligations vis-à-vis international labour standards, including in particular ILO Convention No. 95: Protection of Wages, 1949 and ILO Convention No. 111: Discrimination (Employment and Occupations), 1958.

6. As I already mentioned in my letter dated 3 January 2001 addressed to the Special Rapporteur, the incidents in question were the result of the illicit practices perpetrated by a number of African nationals which run counter to the values and traditions prevailing in Libyan society (murder, theft, trafficking in alcohol and narcotics, prostitution, rape, the counterfeiting of money, fraud and so on). In order to illustrate the point, we have enclosed a list of the offences carried out by the African nationals in question. I have no doubt that the Special Rapporteur will agree with me when I say that all rights must be accompanied by obligations and

that there are limits thereto. Many of the rights set forth under the six principal human rights instruments are subject to restrictions, including, inter alia, the need to ensure respect for the rights and good name of others, and to safeguard national security as well as public order, health and morals.

7. Finally, on behalf of the competent authorities of the Jamahiriya, I have the honour to invite Mr. Glèlè-Ahanhanzo to visit my country, the Jamahiriya, to see the situation of our fellow Africans at first hand. I shall leave it up to him to fix the date and duration of the visit and to choose the towns and places which he would like to see.

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THE RIGHT TO DEVELOPMENT

Note verbale dated 14 January 2002 from the Permanent Mission of Iraq to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

The Permanent Mission of the Republic of Iraq to the United Nations Office and other International Organizations in Geneva presents its compliments to the High Commissioner for Human Rights and has the honour to enclose herewith the study titled "The effects of the embargo and the United States and United Kingdom aggression on the children of Iraq".

The Permanent Mission of the Republic of Iraq would highly appreciate it if the High Commissioner for Human Rights would have this study* circulated as a document of the fifty-eighth session of the Human Rights Commission under item 7 of the agenda of the session.

* Reproduced in the annex as received, in the language of submission and Arabic only.

Annex

The effects of the economic embargo and the United States and United Kingdom aggression on the children of Iraq

The Convention on the Rights of the Child constitutes an important international instrument which ensures children the requisite protection and care in the fields of health, education, the elimination of discrimination and injustice and the enjoyment of a secure and comfortable existence.

Endeavours to secure the advancement of children in Iraq were being made long before the adoption of the Convention in 1989, however. In 1976 a decree was promulgated and entered into force introducing compulsory primary education. In the early 1980s the integration of therapeutic and preventive health services in the governorates of Iraq was effected with the establishment of a central paediatric hospital and the modernization of numerous maternal and child health centres, even in small municipal areas. Working women were afforded significant benefits to ensure adequate care for their children, either in the form of long periods of leave on full pay or benefits and loans. The Labour Code guaranteed the protection of children against labour market exploitation. The institutional framework for the protection of children in Iraq was greatly expanded with the establishment, in 1979, of the Child Welfare Authority under the chairmanship of the Minister of Labour and Social Affairs. Forces were joined to design, monitor and strengthen national platforms of action through cooperation and coordination with the relevant authorities and non-governmental organizations devoted to the welfare of children, including the United Nations Children's Fund (UNICEF).

In 1990, however, Iraq was subjected to one of the most vicious attacks in history, coinciding with the entry into force of the Convention on the Rights of the Child and the imposition of the comprehensive economic embargo. Children have suffered the most from the effects of this aggression and the impact of an economic embargo which has been in place for almost 11 years. This period has been, and continues to be, characterized by a severe shortage of resources in general as well as the imposition of restrictions on and obstacles to the free disposal of those resources by virtue of unjust resolutions imposed under the guise of international legitimacy. All of this has placed children at greater risk in the health, educational and social spheres, just when the major successes of Iraq's development efforts prior to the imposition of the embargo were being crowned by improvements in the health, educational and social situation of children and the achievement of much better results in these domains.

Development efforts have been thwarted by the embargo, as the sanctions have undermined the legitimate rights of children, the assurance of their survival, security and physical integrity as well as their educational development and social well-being. The embargo has made its effects felt in numerous areas, as described here below.

Family living standards in general and the shortage of foodstuffs in particular

The embargo has reversed the gains achieved in the pattern of family spending, which is the acknowledged method by which the consumer distributes his disposable income over a basket of goods and services. (It is generally understood that an increase in expenditure on food as a proportion of total consumption spending signifies a fall in living standards, since it means that other important goods and services such as health services, recreation, household goods and furnishings are being excluded.) The growth and development of children have been adversely

affected, as the economic sanctions have eroded almost a quarter of a century of work aimed at achieving development in this domain. For example, thanks to the improvement of living standards among Iraqi families during the 1980s and 1990s, the relative importance of spending on food as a proportion of total expenditure fell from 54 per cent in 1971/1972 to 48.2 per cent in 1976, 46.3 per cent in 1979, and 42.8 per cent in 1984/1985. During the 1990s, however, this figure rose sharply, reaching 62 per cent in 1993. Prior to the imposition of the sanctions, improvements in family spending patterns in Iraq were accompanied by a marked increase in the average per capita intake of the major nutritional components. The intake of calories, proteins and fats rose steadily from 34 per cent to 42 per cent and then to 35 per cent [sic] during the period from 1979 to 1988. However, because of the severe shortage of foodstuffs which the oppressive circumstances have caused, the per capita intake of these three components has fallen, particularly with regard to protein, an important component for a child's physical growth.

Before the sanctions, Iraq had adopted and implemented a policy based on guaranteeing the entire population a sufficient quantity and quality of food. However, the embargo and the aggression prevented it from continuing with this policy and the nutritional status of the population and individuals deteriorated as a result. This had a marked impact on the health situation, the average daily intake of calories falling from 3,581 calories in 1989 to 1,030 in 1999. Likewise, the amount of protein in the diet fell from 103 grams per day in 1989 to 24 in 1999. It is noteworthy that the latter figure mainly relates to protein of vegetable origin.

The health situation of children is a measure of their nutritional status. Whenever children enjoy adequate nutritional health, they are protected against disease and, if this is accompanied by appropriate care, they can be assured a good level of growth.

The results of the survey on the nutritional status of Iraqi children (as well as the multiple indicator survey) conducted by UNICEF in Baghdad in 2000 show the following:

- Some 15.9 per cent of children were severely or chronically underweight, and 2 per cent were severely underweight;
- Some 22.1 per cent of children were suffering from chronic or severe stunting, severe stunting affecting 1.2 per cent of children;
- Some 5.9 per cent of children were suffering from moderate or severe wasting.

All the indicators relating to chronic or severe malnutrition (underweight, stunting and wasting) are higher in rural areas than in urban centres.

It should be stressed that the effects of the embargo have not been limited to any particular section of the population, but have had a powerful impact on children both in terms of their nutritional and medicinal needs and the provision of all of the requirements for their growth and development. While it may be possible to defer or modify many of an adult's needs, the same does not hold true for a child in the first few years of its life.

In addition to the shortage of food, the embargo has also disrupted the delivery of services relating to the supply of potable water. Water treatment plants sustained considerable damage during the aggression, as the numerous delegations from various agencies and authorities which have visited the region since the military aggression have confirmed. They have also drawn attention to the evident destruction and severe damage caused to many water treatment installations, pumping stations, steam treatment plants and the equipment used by these facilities, particularly in the southern governorates. The Iraqi authorities have done everything in their power to rehabilitate these plants and tackle their lamentable state in order to prevent the spread of water-borne infections and diseases. However, very little has changed because of the ongoing shortage of spare parts and purification equipment and the difficulty of importing them from abroad. Consequently, a significant section of the population is totally

without any safe source of potable water and whatever quantities they receive are wholly inadequate to meet their real needs.

The programmes monitoring the quality of potable water in the country have shown that the percentage of pollutants in drinking water samples taken in all governorates has increased. In some governorates which have been subjected to more intensive aerial and missile bombardments, for example the governorates of Dhi Qar, Basra and Najaf, this figure is very high indeed (50 per cent). In addition, 18 water purification and treatment projects have been brought to a halt by the embargo. Access to safe drinking water is regarded as a fundamental guarantee of a healthy life, particularly where children are concerned. Safe drinking water is one of the major prerequisites for good health, since many children's diseases can be carried via unsafe water. There is also a connection between the absence of facilities for the disposal of human waste and personal hygiene, and a range of diseases, including diarrhoeal diseases and poliomyelitis.

Specialized agencies have endeavoured to supply the various inhabited areas, including rural and remote areas, with potable water, either by expanding purified water networks or constructing storage units. Whereas only half of the population of Iraq had access to potable water in 1968, that figure had risen to 77 per cent by 1987. However, it has increased only slightly since then, reaching 79.5 per cent in 2000.

In spite of the major efforts which the Government of Iraq is making to enhance the cultural situation of children, the iniquitous aggression has had grave consequences for the educational process as well. Damage to the educational environment has been caused not only by the interruption of school supplies contracts and contracts for the import of printing paper for school textbooks, but also by the need to compensate for the shortage of textbooks by using them again and again. Certain companies have also refused to supply Iraq with the pencils which students use for their studies. Since the aggression has damaged other main utilities in the country, including the electricity sector, the educational sector has been affected by electricity cuts, making it difficult for students to do the academic work required to improve their skills and, by consistent study and preparation, to prepare for their exams and deliver the performance required of them throughout the school year.

Through the embargo the aggression has sought to undermine the educational sector as a whole. At every level, the aggression has been targeted at bringing a halt to the development process in Iraq and at all institutions in society, including educational institutions. The latter were damaged during the war of aggression, which destroyed the educational infrastructure. School buildings were destroyed, together with equipment, educational aids, apparatus, laboratories, fittings and furnishings, school records, textbooks and various educational supplies. The total cost of the damage amounted to 214,626,319 Iraqi dinars or over US$ 604 million.

The embargo and the aggression have sought in this way to destroy the minds and intellect of Iraqi children. This is one of the most repulsive crimes of genocide and social destruction which history has ever seen. It contravenes every norm and law and violates every principle on which international human rights treaties and instruments are based.

Health

Children's health is inevitably harmed by shortages of food and potable water. The measure of life expectancy at birth is a reliable indicator of the general level of health and is based on the projected mortality rate across all age groups.

However, the under-five mortality rate is considered a more significant indicator, for two reasons: firstly, because of the demographic weight of this group vis-à-vis the other age groups,

and, secondly, because child mortality rates are known to be rising compared to those of other groups.

The sharp deterioration in the quality of health services for children, the fall in nutritional levels and the decline in living standards have produced the following results:

(a) An increase in the proportion of low-birth-weight babies (weighing less than 2.5 kilograms): according to official records the percentage of children of low birth weight stood at around 5 per cent of all births before the embargo, but climbed steadily to reach a figure of 22 per cent in 1995 and 26 per cent in June 2001;

(b) A large increase in the under-five and infant mortality rates, after Iraq had scored major gains in this area: the infant mortality rate fell to below 30 deaths per 1,000 live births before the embargo and the under-five mortality rate to 50 deaths per 1,000 live births. Both of these rates have now soared so that the infant mortality rate stood at approximately 108 deaths per 1,000 live births and the under-five mortality rate at 131 during the period 1995 to 1999;

(c) A fall in the percentage of children being breastfed: this figure has dropped to 17 per cent compared with global rates which have increased to 40 per cent. One possible explanation for the phenomenon is the poor nutrition among nursing mothers;

(d) A rise in the percentage of children suffering from chronic and severe malnutrition: in spite of a relative improvement in these indicators following the implementation of the Memorandum of Understanding, and in spite of every effort which the State has made to improve the nutritional status of children, the persistence of malnutrition continues to give cause for concern. Studies have shown that malnutrition has contributed to over half of all child deaths.

According to Ministry of Health statistics, the latest figures show a total of 39,733 child deaths in 2001 up to the month of June, while deaths among children over the age of five amounted to 51,660. Taken together, this means a total of 91,393 deaths in the two age groups. As of June 2001, the percentage of low-birth-weight babies (weighing less than 2.5 kilograms) as a monthly average of all birth-weights registered by health institutions during the embargo, stood at 26.08 per cent, as compared with 5.4 per cent in 1990.

A study conducted after the aggression in August 1991 by a team from Harvard University showed that the infant mortality rate had risen to 96 deaths per 1,000 live births; this was four times the rate prevailing prior to the aggression. Likewise, the under-five mortality rate had risen, to 128 deaths per 1,000 live births. A survey by the Ministry of Health and UNICEF in 1999 showed that the infant mortality rate had risen to 108 deaths per 1,000 live births and the under-five mortality rate to 131 deaths per 1,000 live births. At the same time, the maternal mortality rate had risen from 117 deaths per 100,000 live births in 1991 to 794 deaths per 100,000 live births.

In addition to the foregoing, the entire population of Iraq was exposed to thousands of tons of explosives during the vicious aggression.

The United States of America deployed every type of prohibited weapon, polluting the environment and causing serious illnesses as well as side effects which began to manifest in later years. Analytical, epidemiological, clinical and laboratory tests have been carried out into the increasing incidence of cancers, particularly child leukaemia, lung cancer, breast cancer and kidney disease. The incidence of rare foetal deformities and cases of neurological and muscular disorders has also risen, particularly in the southern region and areas close to those which have been polluted by prohibited weapons (depleted uranium). The latter is considered the principle cause of this kind of disease.

As for the psychological impact of the embargo, a study carried out by a Harvard team in 1999 showed that, as a result of the sanctions, 57 per cent of women in Iraq were suffering from psychological problems (anxiety, depression, insomnia, weight loss and headaches). Children were also afflicted by a range of psychological disorders and problems, including depression, sadness, anxiety, fear, insomnia, poor concentration and confusion. These problems were caused by anxiety, fear for the future, and the loss of family members and friends. There is a direct link between such symptoms and the fact that hostile bombardments are being carried out on a virtually permanent basis over Iraqi airspace.

In a subsequent study, the team found that 60 per cent of children were unhappy and that 70 per cent were frightened of losing a family member or loved one.

Education

The Convention on the Rights of the Child, which entered into force in 1990, recognizes the right of the child to a basic education and the need to make primary education compulsory and available free to all. Education is understood to be a decisive factor in managing the problems of poverty and enabling individuals (particularly women) to fulfil their roles. Similarly, the right of children of both sexes to education is a means of guaranteeing their protection against child labour and its associated dangers at an early age and against sexual discrimination. Iraq was among the countries that adopted a policy of compulsory primary education as early as 1978. It did much to overcome the problems associated with drop-out rates and enrolment in primary education, thanks to a national plan which drew on a database of general census indicators. However, the tyrannical embargo imposed on Iraq has impeded this effort. In spite of on-going endeavours by the authorities to implement the Compulsory Primary Education Act, the following symptoms of decline in the educational sector are plain to see:

(a) The percentage of children enrolled in nursery schools fell from 8.2 per cent in 1991 to 6.8 per cent in 1998 and 3.7 per cent in 2000;

(b) The percentage of children enrolled in primary education fell from 92.3 per cent in 1990 to 84.4 per cent in 1996 and 76.3 per cent in 2000. In other words, the enrolment rate in 2000 is lower than the rate in the rest of the world and in developing countries;

(c) Some 88 per cent of children enrolled in the first grade of primary school [do not] continue their studies up to the fifth grade. This percentage is higher than the international average and the rate in developing countries. It reflects lost opportunities to continue education in later years.

In the words of Graça Machel, the former Minister of Education for Mozambique: "I have seen for myself how one year of education can change a child, and how several years of study can change that child's future. I have also seen how education can rescue children from the clutches of poverty, infants from death, and girls from the yolk of slavery. I have lived long enough to see a generation of children armed with an education saving their countries from ruin."

The impact of the embargo has not been limited to the health and education of children in Iraq alone, but has also left its mark on children's well-being and the enjoyment of their childhood. One of the greatest problems engendered by the imposition of the unjust embargo on our glorious region is the entry of numbers of children onto the labour market or their attempt to gain access thereto. Whereas, in 1987, the proportion of economically active children (meaning employed persons and job-seekers) aged 14 and below stood at only 1.3 per cent of all children in this age group, the figure had risen to 7.2 per cent by 1998. While approximately 250 million children, or one child in four, aged between 5 and 14 years, are working in developing countries.

many of them exposed to exploitative and dangerous labour practices, this phenomenon is also on the rise in Iraq.

The World Summit for Children held at New York in 1990 adopted a plan of action for children aimed at developing and implementing national programmes of work for children and establishing mechanisms to monitor the achievement of the objectives established to ensure the welfare of the child. There are a wide variety of indicators suggesting that the well-being of children in Iraq has deteriorated and that many of the rights set forth in the Convention on the Rights of the Child have not been fully realized because of the current circumstances in which Iraqi children are deprived of food, medicine and water. If the aggression continues, they could even be deprived of air.

Hence the need to design and plan effective and appropriate measures to save our innocent children.

Where once the prospects for development favoured great success and the child was viewed by the leadership as a national, patriotic and humanitarian project requiring a healthy environment for growth, education and a family life based on efficiency, well-being and social security, the aggression and the impact of the embargo have led to the destruction of many of these development dreams and they continue to pose a grave threat to human rights in general and the rights of the child in particular.

The fact that the enemies have sought to do battle against children in Iraq raises a question for all persons of good will throughout in the world. What are the reasons for wishing to continue to kill children and to maintain this embargo?

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Fifty-eighth session
Item 6 of the provisional agenda

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Letter dated 19 February 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to transmit herewith a letter dated 18 February 2002 addressed to you by His Excellency Mr. Tahsin Ertuğruloğlu, Minister for Foreign Affairs and Defence of the Turkish Republic of Northern Cyprus.

I would appreciate it if you would have the text of the enclosed letter* circulated as an official document of the Fifty-eighth session of the Commission on Human Rights under item 6 of the provisional agenda.

Signed: Ugur DOGAN
Minister Counsellor
Chargé d'affaires

* Reproduced as received, in the original language only.

GE.02-11358 (E) 150302

Annex

TURKISH REPUBLIC OF NORTHERN CYPRUS
MINISTRY OF FOREIGN AFFAIRS AND DEFENCE
(Lefkoşa, via Mersin-10, Turkey)

18 February 2002

Madam High Commissioner,

I would like to refer to the letter dated 29 August 2001 addressed to you by the Greek Cypriot representative at the United Nations Office in Geneva, which has been circulated as a document of the Commission of Human Rights at the 58th Session under agenda item 6, entitled "Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination" (E/CN.4/2002/123 dated 29 November 2001). In view of the allegations contained in the letter and its annex (Decision 1 (59) on Cyprus adopted by the Committee on the Elimination of Racial Discrimination at its fifty-ninth Session in Geneva on 10 August 2001), I deem it necessary to bring to your kind attention the following:

At the outset, I would like to stress that the Greek Cypriot administration of Southern Cyprus is not the government of the "Republic of Cyprus" as established under the 1960 international agreements with the consent of the two politically equal co-founder partners, the Turkish Cypriot and the Greek Cypriot peoples, and that the legitimacy of the 1960 partnership Republic lay in the joint presence and effective participation of both sides in all organs of the state.

H.E. Mrs. Mary Robinson
High Commissioner,
Commission on Human Rights,
Geneva.

Since the deliberate destruction, in 1963, of the bi-national Republic and the ejection of all Turkish Cypriot elements from the bi-national partnership Government of Cyprus, there has not been a single constitutional government capable of representing both peoples of the island. What have existed, instead, are two separate administrations that have evolved into two sovereign, independent states, one belonging to the Turkish Cypriots and the other to the Greek Cypriots.

The Greek Cypriot administration of Southern Cyprus represents only the Greek Cypriot people, and the said administration, under the pretentious and usurped title of the "Government of Cyprus", has neither the legal or moral right nor the jurisdiction to represent or act on behalf of the Turkish Cypriot people who have their own democratically elected Government and representatives. It is ironic that the Greek Cypriot administration is allowed to represent the "Republic of Cyprus" and submit reports on behalf of the whole of Cyprus to the Committee on the Elimination of Racial Discrimination (CERD), when this purported representation itself amounts to discrimination against the Turkish Cypriot people as it constitutes a flagrant violation of the political and co-founder partnership rights of the Turkish Cypriots.

As for the allegations in the above-mentioned letter and its annex, concerning the military presence of Turkey, I wish to underline that there is no "foreign occupation of Cyprus" but a lawful presence based on international treaties. Turkey intervened in Cyprus in accordance with her rights and obligations under the 1960 Treaty of Guarantee and the Turkish forces are in Cyprus with the full consent of the Turkish Cypriot people who, by exercising their inherent right to self-determination, established the Turkish Republic of Northern Cyprus (TRNC) in November 1983, twenty years after having been left stateless by the Greek Cypriots. The only occupation in Cyprus is the 39 year-old occupation of the seat of government and exploitation of the usurped title of the "Government of Cyprus" by the Greek Cypriots which has been the main obstacle in the way of reaching an agreement between the two sides in Cyprus.

The presence of the Turkish forces in Northern Cyprus, particularly in the absence of a comprehensive agreement, is a vital security requirement for the Turkish Cypriot people. It serves as a deterrent against the repetition of Greek-Greek Cypriot aggression against the Turkish Cypriots as occurred during the 1963-74 period, which is well documented in the relevant reports of the UN Secretary-General as well as those of the international news media. I would, furthermore, like to draw your attention to the fact that there has been no bloodshed on the island ever since the arrival of the Turkish troops and Turkish Cypriots have since found security and been able to live normal lives after eleven years of oppression and persecution by Greek Cypriots.

With regard to the allegations that "the Government of Cyprus continues to be prevented from implementing the Convention" in North Cyprus, I would like to stress, once again, that with a mandate expressing the unanimous will of the Turkish Cypriot people and an effectively functioning government, the TRNC exercises full and exclusive jurisdiction and sovereignty over its whole population and territory. The Turkish Cypriot authorities are fully competent to safeguard the implementation of the universal human rights and freedoms in the TRNC and I believe the following quotes from the successive reports of the US State Department that there is a "**strong regard for democratic principles**" in North Cyprus and that "**the Turkish Cypriot authorities respect human rights, norms and practices**", speak for themselves.

It should be noted in reference to the enjoyment of the "rights to freedom of movement and residence and to own property", that these are matters inextricably linked to the core aspects of the Cyprus issue. The Committee taking into consideration only the Greek Cypriot side's views and in isolation of the long history of the UN negotiating process, adopted Decision 1(59), which if implemented, would be tantamount to the negation of the agreed principle of bi-zonality, that has now assumed a two State nature, and would thus facilitate the attempts of the Greek Cypriot side to pre-empt the substance of a possible agreement, prejudicing the ability of the two parties to engage in free negotiations over core aspects of the Cyprus issue.

With its said Decision, the CERD is deliberately ignoring the fact that the two sides in Cyprus are separated since 1974 by a ceasefire agreement under the auspices of the UN. Furthermore, the decision auspiciously disregards the fact that a buffer zone has been established between the respective territories of the TRNC and the Greek Cypriot administration by the relevant UN Security Council resolutions, a zone under the control and authority of United Nations Force in Cyprus (UNFICYP).

The said Decision further disregards the reality that the voluntary regrouping of the Turkish Cypriot and the Greek Cypriot populations under the voluntary Exchange of Populations Agreement in 1975 took place upon the consent of both sides with the assistance of the UN. As a result, Turkish Cypriots in the south moved to the north and Greek Cypriots in the north moved to the south, with the exception of some 300 Turkish Cypriots who opted to remain in South Cyprus and some 400 Greek Cypriots who currently remain in the TRNC.

Efforts aimed at reconciliation and rapprochement of the two peoples of the island are hampered by the continuing inhuman embargoes and measures of isolation imposed on the people of the Turkish Republic of Northern Cyprus by an administration which the international community allows to carry the hijacked title of the "Government of Cyprus". These inhuman embargoes, which are directed against the Turkish Cypriot people solely on the basis of their ethnic origin, range from prohibitions put on the simplest forms of transaction of the Turkish Cypriot people with the outside world, to the most fundamental issues such as representation in international fora. These inhuman and totally unjustified measures, many of which date back to 1963 and, therefore, have a 39-year-old history, have taken their toll not only on the economic, social, cultural and political life of the Turkish Cypriot people, but also on the relationship between the two peoples, which has naturally deteriorated to the point of total lack of trust and confidence.

We call upon the whole international community, to act in line with the political realities of Cyprus and finally impress upon the Greek Cypriot administration of Southern Cyprus that it is not, it has never been and it will never be the government of the Turkish Cypriot people. Such a solid step by the international community will contribute immensely to the new process of face-to-face talks and the positive atmosphere created in Cyprus by the decision of the two leaders to make a fresh start. Otherwise, the Greek Cypriot side, which has been allowed to sail under the false banner of the "Government of Cyprus", will not concede the equal political status and sovereign rights of the Turkish Cypriot people, which is a prerequisite for reconciliation in Cyprus.

Please accept, Madam High Commissioner, the assurances of my highest consideration.

Tahsin Ertuğruloğlu
Minister of Foreign Affairs
and Defence

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Note verbale dated 21 January 2002 from the Permanent Mission of Iraq to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

The permanent Mission of the Republic of Iraq to the United Nations Office and other International Organizations in Geneva presents its compliments to the High Commissioner for Human Rights and has the honour to enclose herewith a copy of a study titled "The embargo on Iraq in the light of the principles and rules of international law".

The Permanent Mission of the Republic of Iraq would highly appreciate it if the High Commissioner for Human Rights would have this study* circulated as a document of the Fifty-eighth session of the Commission on Human Rights under item 10 of the agenda of the session.

* Reproduced in the annex as received, in the language of submission and Arabic only.

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Annex

The principles and norms of international law

1. The sanctions regime which has been imposed on Iraq is based on Security Council resolution 661 (1990) of 6 August 1990, the resolution by which the sanctions were imposed, and two later resolutions; Security Council resolutions 665 (1990) of 25 August 1990 and 670 (1990) of 25 September 1990. By these resolutions the Security Council established an embargo against Iraq which is regarded as one of the most comprehensive regimes of compulsory sanctions. To the extent that the sanctions affect every aspect of life, this regime can be characterized as a slow and deliberate act of genocide against the Iraqi people. The imposition of the comprehensive embargo against Iraq inevitably raises the fundamental legal question of whether the Security Council is empowered to adopt sanctions resolutions such as those that have been imposed on Iraq.

2. Admittedly the Security Council does have the power under Article 41 of the Charter of the United Nations to decide what measures not involving the use of armed force are to be employed to give effect to its decisions. It may call upon the Members of the United Nations to apply such measures, which may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations. On the other hand, in its capacity as an organ of the United Nations, the Security Council is required to exercise its powers and functions set forth under the Charter in accordance with the Purposes and Principles of the Charter. Indeed, pursuant to Article 24, paragraph 2, of the Charter, in discharging its responsibilities for the maintenance of international peace and security, the Security Council is called upon to act "in accordance with the Purposes and Principles of the United Nations". The preamble of the Charter makes reference to "the peoples of the United Nations", reaffirming faith in "fundamental human rights, in the dignity and worth of the human person", the establishment of justice, the promotion of "social progress", "better standards of life in larger freedom" and the need "to employ international machinery for the promotion of the economic and social advancement of all peoples".

According to Article 1, paragraph 1, of the Charter, one of the Purposes of the United Nations is to "bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes". Under Article 1, paragraph 3, of the Charter the achievement of international cooperation is required to solve "international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all". Article 2, paragraph 3 thereof, affirms the principle that the Organization and its Members should settle their international disputes "by peaceful means in such a manner that international peace and security, and justice, are not endangered".

In addition to these provisions, Article 55 of the Charter requires the United Nations to promote:

"(a) Higher standards of living, full employment and conditions of economic and social progress and development;

"(b) Solutions of international economic, social, health and related problems, and international cultural and educational cooperation; and

"(c) Universal respect for, and observance of, human rights and fundamental freedoms for all."

It is clear from the relevant resolutions which it has adopted and the mechanisms which it has established that the Security Council has overstepped the boundaries established by the Charter for the exercise of its functions and powers. It has thereby committed a flagrant violation of the Charter as the international instrument on which it relies for the adoption of its resolutions, with tragic consequences for Iraq, the Iraqi people and all sectors. In the health sector in particular this has led to the deaths of hundreds of thousands of children and to malnutrition. In the educational sector, the embargo has brought about the collapse of the educational and cultural process, while in the social sector, it has caused an increase in juvenile delinquency, begging and anxiety about the future as well as the disintegration of family life. The very fact that the embargo has engendered these tragic consequences in itself represents a flagrant violation of the principles of justice, social progress, the safeguarding of a decent standard of living, and the right to life, which are recognized under the Charter.

3. The Security Council has violated not only the Charter, but also a number of international instruments concerned with human rights and international humanitarian law, some of which embody international peremptory norms. These instruments, which represent an extension of the true vision of equity and human rights articulated in the Charter, are, pursuant to Article 24 thereof, binding upon the Security Council.

4. Under article 3 of the Universal Declaration of Human Rights which was adopted by the United Nations General Assembly on 10 October 1948 and is part of Iraq's national law, everyone has the right to life. Article 25 of the Declaration stipulates that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, and that motherhood and childhood are entitled to special care and assistance. According to article 26 of the Declaration, everyone has the right to education. These provisions have been stripped of their meaning by the Security Council resolutions.

5. The provisions of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, which Iraq has ratified, have also been rendered meaningless by the Security Council resolutions. Under article II of the Convention genocide is defined as meaning "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

"(a) Killing members of the group;

"(b) Causing serious bodily or mental harm to members of the group;

"(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

"(d) Imposing measures intended to prevent births within the group;

"(e) Forcibly transferring children of the group to another group."

The Convention characterizes genocide as a crime under international law which States have an obligation to prevent and punish.

If this definition were applied to the situation of Iraq, it could easily be said that the people of Iraq are being deliberately subjected to harsh conditions of life (particularly shortages of food and drugs) calculated to bring about its physical destruction in whole or in part. The deaths of Iraqi children are one of the tragic outcomes of these conditions.

6. According to the Declaration of the Rights of the Child which was proclaimed by the General Assembly in 1959, children are entitled to special protection and should be given the requisite opportunities and facilities to enable them to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner. The Declaration affirms the necessity of providing care to the child and his mother and that the child has the right to adequate nutrition, housing, recreation, medical services as well as an education.

7. The 1990 Convention on the Rights of the Child recognizes a set of important principles, which include the following:

(a) Every child has the inherent right to life;

(b) Every child has the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health;

(c) Every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;

(d) Every child has the right to education;

(e) Every child has the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or moral development.

8. Likewise, according to the International Covenant on Economic, Social and Cultural Rights which entered into force in 1976, everyone has the right to the enjoyment of the highest attainable standard of physical and mental health as well as to education.

9. According to article 54, paragraph 1, of the 1977 Additional Protocol I to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, which was adopted on 12 August 1949: "Starvation of civilians as a method of warfare is prohibited". Under article 8 of the Rome Statute of the International Criminal Court, which was adopted on 17 July 1998, a war crime is an act involving, inter alia, "the intentional use of starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions of 1949". If the Protocol, in its capacity as an international instrument, prohibits the use of starvation in time of war, there is all the more reason for it to forbid it in time of peace. Yet this is precisely the type of practice which the Security Council is imposing on Iraq by virtue of resolutions which contravene article 54, paragraph 1, of the said Protocol. The following point exacerbates the gravity of this state of affairs. The 1977 Additional Protocol I, like the 1949 Geneva Conventions for the Protection of the Victims of War, is acknowledged as being part of international humanitarian law. It is therefore regarded as an international peremptory norm, the purpose of which is to protect interests that go beyond the self-interest of States. States are not allowed, for example in their reciprocal relations, to violate such norms nor is any derogation therefrom permitted, since they have a moral value which makes any derogation therefrom morally untenable, as in the case of the right to life. This principle is elucidated in article 60, paragraph 5, of the Vienna Convention on the Law of Treaties of 1969, according to which States are not entitled to invoke the breach of a treaty by another party as a ground for the termination or suspension of its operation, where such treaty contains provisions relating to the protection of the human person or is of a humanitarian character. In addition, under article 53 of the Convention, a treaty is void, if it conflicts with the peremptory norm of general international law. Since the Security Council's resolutions concerning the embargo conflict with such norms, their legitimacy can therefore be called into question. These norms are binding both on States

and on international organizations, including the United Nations and its various agencies, and may not be impaired or altered, even in the circumstances under which the Security Council is entitled to take action according to Chapter VII of the Charter.

10. The foregoing clearly shows that, by establishing the type of sanctions regime for which the relevant resolutions provide, the Security Council has not only infringed the principles and norms of the Charter of the United Nations, on which its existence, functions and powers are based, but also numerous international instruments, some embodying peremptory norms allowing of no derogation or impairment under any circumstances. This shows the lengths to which the Council has gone in flouting the principles and norms of international law, beginning with those recognized under the Charter of the United Nations. It in turn raises the very important question of whether Security Council resolutions ought to be scrutinized by the International Court of Justice in order to guarantee their conformity with the legal rules established under the Charter.

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RATIONALIZATION OF THE WORK OF THE COMMISSION

Note by the secretariat

1. On 25 February 2002, the President of the Economic and Social Council addressed a letter to the Chairperson of the fifty-seventh session of the Commission on Human Rights conveying to the Commission the support of the Bureau of the Council and the Council itself for the important work to be undertaken by the Commission at its fifty-eighth session. The President stated his intention to work with the Chairperson in the context of the forthcoming session to strengthen the links between the Council and its subsidiary bodies in order to contribute to greater policy coherence and improved synergies in the work carried out both by the Council and the functional commissions.

2. The President indicated that, with that in mind, he would request the Vice-President of the Council responsible for its general segment to liaise closely with the Commission on Human Rights and to be available to assist in the Commission's work, if requested.

3. The full text of the letter of the President of the Economic and Social Council is reproduced in the annex.*

* Reproduced as received, in the original language only.

Annex

The President
of the
Economic and Social Council

25 February 2002

Dear Mr. Chairman,

It is my understanding that the Commission on Human Rights will meet, in Geneva, from 18 March to 26 April 2002.

As President of the Economic and Social Council, I wish to convey through you, to the Commission, not just my own full support, but that of the Bureau of the Council, and of course the Council itself, for the important work to be undertaken by the Commission at its 58th session.

I wish to inform you that it is my intention to work with you and assist in the context of the forthcoming session in an attempt to strengthen the links between the Council and its subsidiary bodies. I trust this will contribute to greater policy coherence and improved synergies in the work carried out both by the Council and the functional commissions.

With this in mind, I will request the Vice-President of the Council responsible for the general segment to liase closely with the Commission, and to be available to assist in the Commission's work, if requested.

I look forward to our collaboration, which I hope will strengthen the work of the Commission on Human Rights and help contribute to a successful outcome of its upcoming session.

Please accept, Excellency, the assurances of my highest consideration.

Ivan Šimonović

H.E. Ambassador Leandro Despouy
Chairman of the Commission on Human Rights

UNITED NATIONS **E**

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 of the provisional agenda

CIVIL AND POLITICAL RIGHTS

Letter dated 26 February 2002 from the Permanent Representative of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to transmit herewith the press release of the Organization of the Islamic Conference (OIC)-European Union (EU) Joint Forum, which was held in Istanbul on 12 and 13 February 2002.

The Joint Forum in which 46 OIC member and observer States, and 28 EU member and candidate States participated, was organized at the initiative of Turkey with the theme "Civilization and harmony: the political dimension". Fifty-one of the participating States were represented at the foreign ministerial level.

The tragedy of 11 September 2001 has illustrated the vulnerability of the understanding among different cultures and civilizations, and has demonstrated how easy it is for deep-rooted prejudices to surface. It was witnessed that one of the first temptations after 11 September was to identify terrorism along cultural and religious lines. Therefore, the Forum, which confirmed its belief in the harmony among civilizations and which underlined that cultures in their diversity complement and enhance one another, was indeed considered a timely initiative by all the participants.

GE.02-11379 180302

The Forum provided the opportunity for the OIC and EU to reiterate their joint responsibility, as well as their willingness, to contribute to the quest for a better understanding among different cultures and civilizations. We believe that the positive atmosphere yielded by the Forum can also make an important contribution to the work of the Commission on Human Rights.

I would therefore appreciate it if you would have the text of my letter and the enclosed OIC-EU Joint Forum press release* circulated as an official document of the fifty-eighth session of the Commission on Human Rights under item 11 of the provisional agenda.

(Signed) Murat SUNGAR
Ambassador
Permanent Representative

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* Reproduced as received, in the original language only.

Annex

OIC-EU Joint Forum

13 February 2002

PRESS RELEASE

The Ministers of Foreign Affairs of the OIC Member and Observer Countries and the EU Member and Candidate Countries came together, on 12-13 February 2002, for a Joint Forum in Istanbul at the invitation of the Foreign Minister of Turkey, to share their assessments of the world's present political situation and to promote understanding and harmony among civilizations.

History has taught us that the lack of mutual knowledge and respect among civilizations can greatly affect world stability and peace. Harmony and welfare are nurtured when different peoples make communication a priority, taking the time to express and listen to each other's views and interests, acknowledging and tolerating differences, while at the same time seeking out commonalities that can help build strong relationships that promote political and economic cooperation.

The tragic events of September 11th and their repercussions have shown the need to strengthen tolerance and understanding among different cultures to avoid reappearance of deeply rooted prejudices that can surface. The horrifying attacks of September 11th are purely brutal acts of terrorism and they cannot be explained or justified for religious, cultural or any other reasons whatsoever. On the other hand, September 11th has also sparked a growing consciousness of the need for all sides to discuss and attempt to better understand the differences in perceptions, values and interests, as well as to promote tolerance and appreciation for cultural diversity among them. We jointly have a responsibility to address and resolve issues which can lead to divisions within and between our communities, to embrace and value our diversities, and to promote and uphold the values we all share.

During its deliberations, the OIC-EU Joint Forum has acknowledged the various activities, resolutions, recommendations and reports of international and regional organizations, such as the UN and the UNESCO, the OIC, the EU, the Council of Europe, the OSCE, the Arab League, the Organization of African Unity and other fora as the Barcelona Process, including the Global Agenda on Dialogue Among Civilizations adopted by the UN General Assembly on 21 November 2001, which are designed to protect and improve the common heritage of mankind and the shared values of different cultures, and to enhance tolerance, dialogue and cooperation within and among nations and peoples.

In the course of discussions the following points were agreed upon:

- The Forum reaffirms its strong belief that cultures, in their diversity, complement and

enhance one another. The Forum also confirms its belief in the harmony among civilizations and in its attainability.

- The main means to support coherence and solidarity and to avoid racial, religious and cultural prejudices is to enhance our knowledge of one another through communication and cooperation for the promotion of common universal values, such as those enshrined in the Universal Declaration of Human Rights and other relevant international human rights instruments. To this end the two political organizations, the EU and the OIC have a joint responsibility to contribute to the achievements of these goals.

- The Forum affirms that terrorism cannot be justified for any reason whatsoever. It recognizes the joint responsibility to fight terrorism in all its forms and manifestations within the framework of the UN, in conformity with its Charter and its resolutions.

- The OIC and EU countries are committed to defining problems emerging from cultural prejudices and political and economic injustices and to promoting solutions that will contribute to universal peace, welfare and stability.

- The Forum underlined that for peace, stability and harmony to prevail , the Middle East conflict must be settled in a just and comprehensive manner and in accordance with international law and the relevant Security Council resolutions. In this context, the "two state" solution will contribute to bring peace and security to the peoples concerned.

- The OIC-EU Forum, having listened to the exchange of ideas and to participants' views, has concluded that there is a need for further cooperation. The Forum proposes that existing bilateral and multilateral frameworks continue to be used for general debate on the issues raised during this meeting.

- The Forum noted with appreciation the invitation of His Highness the Emir of the State of Qatar in his capacity as current Chairman of the OIC to host a OIC-EU Troika meeting in the second half of the current year, in Doha.

The Forum thanked the Government of Turkey for the initiative and effort in organizing this Forum that constituted an event of great political significance. They welcomed Turkey's intention to publish the *compte rendu* of the OIC-EU Joint Forum and its readiness to facilitate communication among the participating countries and organizations if the need arises.

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Items 9 (a) and 11 (e) of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, INCLUDING: QUESTION OF HUMAN RIGHTS IN CYPRUS

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: RELIGIOUS INTOLERANCE

Letter dated 4 March 2002 from the Permanent Representative of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to transmit herewith a letter dated 28 February 2002 addressed to you by His Excellency Mr. Tahsin Ertuğruloğlu, Minister for Foreign Affairs and Defence of the Turkish Republic of Northern Cyprus.

I would appreciate it if you would have the text of the enclosed letter* circulated as an official document of the fifty-eighth session of the Commission on Human Rights under items 9 (a) and 11 (e) of the provisional agenda.

(Signed) Murat SUNGAR
Ambassador
Permanent Representative

* Reproduced as received, in the language of submission only.

GE.02-11393 (E) 180302

Annex

TURKISH REPUBLIC OF NORTHERN CYPRUS
MINISTRY OF FOREIGN AFFAIRS AND DEFENCE
(Lefkoşa via Mersin 10 Turkey)

28 February 2002

Madam High Commissioner,

I have the honour to refer to the letter dated 16 October 2001 addressed to Your Excellency by the Greek Cypriot representative at the United Nations Office in Geneva, which has been circulated as a document of the Commission of Human Rights at the fifty-eighth session under agenda items 9(a) and 11(e), entitled "Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, Including the Question of Human Rights in Cyprus" and "Civil and Political Rights, Including the Question of Religious Intolerance", respectively (E/CN.4/2002/124 dated 27 November 2001). In view of the allegations contained in the letter and its annexes regarding cultural property in the Turkish Republic of Northern Cyprus, I am compelled to bring to your kind attention the following:

At the outset, I wish to underline that there is no occupation in Cyprus other than the 39-year-long occupation of the seat of government and exploitation of the usurped title of the "Government of Cyprus" by the Greek Cypriots. It is important to note that the division of the island, both territorially and ethnically, came about in 1963 as a direct consequence of the Greek Cypriot onslaught on the Turkish Cypriot people. Hence, the arrival of the United Nations Peace-keeping Force in Cyprus in 1964. It is also important to remember that the Turkish intervention, which was carried out in accordance with Turkey's rights and obligations under the 1960 Treaty of Guarantee, did not come about until 1974 despite the

H.E. Mrs. Mary Robinson,
High Commissioner,
Commission on Human Rights,
Geneva.

Greek Cypriots' "ethnic cleansing" of the Turkish Cypriot people during the 1963 – 1974 period, and was the direct result of the *coup d'etat* staged by the junta in Greece through its military forces and local collaborators so as to annex the island to Greece.

Since the deliberate destruction, in 1963, of the bi-national Republic and the ejection of all Turkish Cypriot elements from the bi-national partnership Government of Cyprus, there has not been a single constitutional government capable of representing both peoples of the island. What have existed, instead, are two separate administrations that have evolved into two sovereign, independent states, one belonging to the Turkish Cypriots and the other to the Greek Cypriots.

The relevant competent authority in the Turkish Republic of Northern Cyprus, namely the Department of Antiquities and Museums, takes pride in its efforts to protect the cultural heritage of Northern Cyprus, utilizing its limited resources in the most effective way in maintaining and restoring all sites and monuments, irrespective of their historical and religious origins. Turkish Cypriot authorities have received praise, for their efforts in this regard, from foreign experts and observers who have visited the island on various occasions to study the situation.

Greek Cypriot allegations of "destruction and desecration of churches" in Northern Cyprus have already been conclusively refuted by independent foreign experts and observers including prominent experts from UNESCO, the World Council of Churches and the Council of Europe.

In 1989, the then General Rapporteur of the Sub-Committee on the Architectural and Artistic Heritage of the Committee of Culture and Education of the Council of Europe, Senator Ymenus van der Werff, in paragraph 5.1 of his report, which was published as a document of the Council of Europe on 2 July 1989 (AS/Cult/A (41) 01), indicated that **"In the North ... we saw no churches destroyed"** and went on to say that the Turkish Republic of Northern Cyprus authorities were doing their outmost in protecting the cultural heritage in Northern Cyprus. Furthermore, in paragraphs 5.4 and 5.5 respectively, he reported that **"Restoration is going on in both the North and South. Greek Orthodox churches seemed to be in sound structural condition in both the North and the South"** and that **"The coordination of conservation, planning and environmental protection seems better assured in the North than in the South".**

The current Rapporteur of the Sub-Committee on the Cultural Heritage of the Council of Europe, Mrs. Vlasta Stepova, during her visit to the Turkish Republic of Northern Cyprus on 29 October 1999, has stated that the best way to preserve cultural works is to find alternative everyday use for them. She added that no country in the world has the means to turn every cultural building into a museum or to preserve it fully. She was most impressed by the preservation, through everyday use, of the St. Barnabas Monastery and Salamis ruins near Gazimağusa, as a museum and as a venue for cultural events, respectively. She also praised the use of the Bellapais Abbey near Girne as a venue for classical music concerts and exhibitions for the benefit of the public.

Returning to the island in November 2000, Mrs. Stepova repeated her predecessor's conclusion that there is no destruction of cultural heritage in Northern Cyprus. It is no surprise that she was severely attacked by the Greek Cypriot parliamentarians at the Parliamentary Assembly of the Council of Europe for stating her observations; a clear case of intolerance towards truth. The Director of the Czech State Institute for Monuments Care, Mr. Josef Stulc, who accompanied the Rapporteur on her visit, also refuted the Greek Cypriot claims of destruction by clearly stating in his Report that **"this (Greek Cypriot) interpretation is not confirmed by my visit to the North"** (Report no: AS/Cult/AA (2001) 02, dated 22 June 2001).

Foreign experts and visitors have expressed admiration for the great care and skill employed by the Turkish Cypriot authorities in preserving the original character and essence of buildings while at the same time finding a new use for them which ensures their continued existence for the benefit of the public.

Indeed, the conservation of historic buildings through use is highly recommended by the **Amsterdam Declaration**, which was issued by the Congress on the European Architectural Heritage on 24 October 1975. The Amsterdam Declaration, *inter alia* states that:

"It has been shown that historic buildings can be given new functions related to the needs of contemporary life." (Page 7, para.3)

". . Local authorities should... afford functions to buildings which, whilst respecting their character, correspond to the needs of contemporary life and thus ensure their survival." (Page 9, paras. 3 and 5)

"A policy of conservation also means the integration of the architectural heritage into social life." (Page 10, para. 5)

The same objectives are expressed in the **Charter of Venice**, which was drawn up in May 1964 by the International Congress of Architects and Technicians on Historical Monuments. According to Article 5 of the Charter of Venice, *"The conservation of historical buildings can be achieved through use for any useful communal purpose. This is a desirable way of use, however the original plan and ornaments of the buildings should be respected and should not be altered."*

Since 1976, it has become a general Council of Europe policy to urge the reuse of redundant religious buildings. This policy was reasserted by the Parliamentary Assembly in May 1989 when it adopted Resolution 916.

Moreover, the Greek Cypriots themselves utilize most of the ancient monuments for cultural activities. While some of those ancient monuments are used temporarily for performances, some of them are converted for permanent use. For instance, the Monastery of Monagri and its 18th century chapel was renovated by the Courtauld Institute of London and is currently being used as an art center.

I would like to remind you that the systematic campaign of ethnic cleansing directed by the Greek Cypriots against the Turkish Cypriot people during the 1963-74 period also entailed a process of "cultural cleansing" of the island of its Turkish-Muslim heritage. This manifested itself in the destruction of 107 mosques, shrines and other places of worship belonging to the Turkish Cypriots in 103 villages, as well as the sacred objects within them.

The Greek Cypriot administration continues to show utter contempt for the Turkish-Muslim heritage in Southern Cyprus, where Ottoman Turkish shrines are under threat of destruction. For instance, on 29 August 1999, Greek Cypriot elements perpetrated a despicable arson attack on one of the most sacred Islamic sites on the island, namely the Hala Sultan Tekke mosque in Larnaca.

It is rather paradoxical that the Greek Cypriot side, on the one hand, complains about the "destruction and desecration of churches" in Northern Cyprus, and on the other, as is evident from the foregoing, has systematically attacked, destroyed or treated with utter

disrespect cultural and religious monuments and places of worship belonging to the Turkish-Muslim heritage of the island.

Furthermore, while claiming to care very much for the cultural heritage of the island, the Greek Cypriots block the passage of aid to the Turkish Cypriot authorities in the North, although it is there that so many of the cultural monuments lie; monuments whose importance is not just local, but universal. The Greek Cypriots go to great lengths to prevent international organizations or private institutions from taking an interest in or providing assistance to the TRNC. They even try to prevent archaeologists from conducting research in the TRNC.

Please accept, Madam High Commissioner, the assurances of my highest consideration.

Tahsin Ertuğruloğlu
Minister of Foreign Affairs
and Defence

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Agenda item 20

RATIONALIZATION OF THE WORK OF THE COMMISSION

Note by the secretariat

On 27 November 2001, the Director of the Population Division, Department of Economic and Social Affairs, addressed, on behalf of the Chairman of the Commission on Population and Development, a letter to the Chairperson of the fifty-seventh session of the Commission on Human Rights drawing the attention of the Commission to the reports and work programme of the Commission on Population and Development. The letter is reproduced in the annex to the present document.*

* Reproduced as received, in the original language only.

GE.02-11514 (E) 210302

Annex

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE:

27 November 2001

Dear Mr. Despouy,

In its resolution 2001/27 on improving the working methods of the functional commissions, the Economic and Social Council, among other things, encourages the functional commissions, within existing resources, to share more systematically the outcome of their work (op. para. 11). In follow-up to this resolution, I am writing you on behalf of Mr. Makato Atoh, Chairman of the Commission on Population and Development.

I am pleased to enclosed the final version of the primary substantive reports that were deliberated at the thirty-third session (2000) and thirty-fourth session (2001) of the Commission on Population and Development:

1. *Population, Gender and Development: The Concise Report*
2. *Population, Environment and Development: The Concise Report*

The reports are also available through the United Nations Population Division web site (http://www.un.org/esa/population/unpop.htm).

At its thirty-fifth session, scheduled for 1-5 April 2001, the Commission on Population and Development will consider the special theme of reproductive rights and reproductive health. The concise report on this subject should be completed by 15 January 2002, and the draft unedited version will be placed on the Population Division web site soon after (follow the link to Commission on Population and Development).

At its thirty-sixth session (2003), the Commission will consider population, education and development, as decided in its decision 2001/1. In addition, at its thirty-seventh session in 2004, the Commission will undertake its second quinquennial Review and Appraisal of the progress made in achieving the goals and objectives of the Programme of Action of the International Conference on Population and Development.

We are hopeful that these reports might be useful to the deliberations at your Commission. If you would like to further discuss these reports and the work programme of the Commission on Population and Development, please contact me. My fax number is (212) 963-2147.

Yours sincerely,

Joseph Chamie
Director
Population Division/DESA

Mr. Leandro Despouy
Chairperson
Commission on Human Rights

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COMMISSION ON HUMAN RIGHTS
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Agenda item 3

ORGANIZATION OF THE WORK OF THE SESSION

Note by the secretariat

1. On 18 March 2002, a letter was received by the Chairperson of the fifty-eighth session of the Commission on Human Rights from the Permanent Representative of Indonesia to the United Nations Office at Geneva. Attached to the letter was a copy of a note verbale dated 18 March 2002 addressed by the Head of the delegation of Indonesia to the High Commissioner for Human Rights. It was indicated in the letter that the note verbale "purports to clarify the facts pertaining to Indonesia brought up by the High Commissioner at the opening of the fifty-eighth session of the Commission on Human Rights". The Permanent Representative of Indonesia requested that the note verbale be issued as an official document of the Commission on Human Rights "in order to dispel any misunderstanding that the members of the Commission might entertain concerning these issues". Pursuant to that request, the note verbale from the Head of the delegation of Indonesia is reproduced in annex I.*

2. On 20 March 2002, during the fourth plenary meeting of the Commission, the High Commissioner for Human Rights orally corrected her statement made on 18 March at the opening of the fifty-eighth session of the Commission. The text of the corrigendum to the opening statement is reproduced in annex II.*

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* Reproduced as received, in the original language only.

Annex I

PERMANENT MISSION
OF THE REPUBLIC OF INDONESIA
TO THE UNITED NATIONS
AND OTHER INTERNATIONAL
ORGANISATIONS
GENEVA

Ref. 191/POL-60/2002

The Head of the Indonesian Delegation to the 58th session of the Commission on Human Rights presents his compliments to the High Commissioner for Human Rights and has the honour to convey to the latter some comments regarding a number of points raised in her statement at the opening of the 58th session of the Commission.

The Head of the Indonesian Delegation was surprised and deeply disturbed by the statement of the High Commissioner for Human Rights on Indonesia which, in our view, misrepresents the facts and fails to take into account three important communications which were sent to the Office of the High Commissioner for Human Rights during the course of last year.

The statement that the jurisdiction of the ad hoc Human Rights Court does not extend to alleged violations committed in East Timor before the August 1999 popular consultation is incorrect, since the Presidential Decree No. 53/2001 restricting the mandate of the ad hoc Court to trying cases which occurred after the popular consultation was rectified and replaced by Presidential Decree No. 96/2001, extending this same mandate to alleged abuses committed both before and after the popular consultation, as originally intended. This last Decree has been in operation since 1 August 2001. These facts had been duly conveyed to the Office of the High Commissioner for Human Rights by the Permanent Mission of the Republic of Indonesia in its Note Verbale 514/POL-168/2001, dated 8 August 2001, and by a letter of the Permanent Representative of Indonesia to the United Nations in New York addressed to the President of the United Nations Security Council on 9 August 2001 as contained in document S/2001/779.

Furthermore, the Head of the Indonesian Delegation would like to express his regret that once again the High Commissioner insisted on establishing a link between the provisions of the agreement between the Government of the Republic of Indonesia and the Office of the High Commissioner for Human Rights on technical cooperation, and her request to expand the jurisdiction of the ad hoc Human Rights Court beyond the dispositions set out in Presidential Decree No. 96/2001. This point had already been brought to the attention of the High Commissioner for Human Rights by the Foreign Minister of Indonesia in a letter forwarded to her by this Mission in Note Verbale 643/POL-204/2001, dated 5 October 2001, giving two reasons as to why such a conditionality was unacceptable to the Government of Indonesia:

- Firstly, quite apart from the fact that this conditionality clearly goes against the spirit of technical cooperation itself, it is also contrary to the letter and spirit of the Exchange of Letters between the Government of Indonesia and the Office of the High Commissioner for Human Rights, which constitutes a binding international agreement.

- Secondly, extending the jurisdiction of the ad hoc Human Rights Court as requested by the High Commissioner is inconsistent with the agreed Chairperson's Statement of the 57th session of the Commission on Human Rights, which refers to alleged cases of violations "leading up to and immediately following the popular consultation held in August 1999 ".

Despite the fact that the Office of the High Commissioner for Human Rights had unilaterally suspended the implementation of the agreement, the Government of Indonesia nevertheless continued to pursue its own efforts to promote capacity-building, including the training of the Indonesian judges to be appointed to the ad hoc Human Rights Courts, through bilateral cooperation with friendly countries.

The above clarifications are designed to dispel once and for all any lingering misunderstanding that has arisen with regard to the statement on Indonesia made by the High Commissioner this morning. Moreover, the Head of the Indonesian Delegation wishes to let it be known that he shall also be forwarding a copy of this Note Verbale to the Chairman of the Commission on Human Rights and shall request that it be issued as an official document.

The Head of the Indonesian Delegation to the 58th session of the Commission on Human Rights avails himself of this opportunity to renew to the High Commissioner for Human Rights the assurances of his highest consideration.

Geneva, 18 March 2002

PERMANENT MISSION OF THE REPUBLIC OF INDONESIA

Annex II

Corrigendum to Opening Statement by the High Commissioner for Human Rights at the opening of the 58th session of the Commission on Human Rights

Before I introduce this report I would like to correct a technical error in my opening Statement to the Commission on Monday. I referred to Presidential Decree 53, of 23 April 2001, establishing the Ad hoc Human Rights Court and I should have mentioned that the decree was revised by Presidential Decree 96 of 1 August 2001. The effect of that revision is that the Ad hoc Human Rights Court may now consider incidents that occurred during the months of April and September 1999. However, Presidential Decree 96 also limited the jurisdiction of the court to only three districts in East Timor, namely, Dili, Liquisa and Suai. The time and geographical limitations on the jurisdiction of the Ad hoc Human Rights Court introduced by Presidential Decree 96 continue to affect the capacity of the court to consider a number of serious incidents reported by the United Nations International Commission of Inquiry on East Timor and by the Indonesian Commission of Investigation into Human Rights Violations in East Timor. These limitations remain a matter of concern.

I met yesterday with the distinguished Ambassador of Indonesia to express my regret for the technical error, which has now been corrected in the official version of my statement.

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Item 8 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Letter dated 15 March 2002 from the Permanent Observer for Palestine to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

The Israeli occupation forces committed a number of crimes against the holy shrines in Bethlehem. They have burned and demolished the Wooden Cross and another cross, a present by an American Bishop to "Dar Al Kalimate" School. They have used their machine guns and ranks to shell rockets at the church and hospital of the Holy Family, causing damage to the church including the Virgin Mary's statue which sustained 20 shots from heavy machine guns.

At 4 p.m., Thursday, 14 March, the Israeli occupation forces caused the death of a Palestinian baby boy at a roadblock near "Netsarim" settlement to the south of Gaza by denying passage to the ambulance which was to transport him together with two other children from al-Aqsa hospital in Deir al-Balah to al-Nasr children's hospital in Gaza. The ambulance was blocked at the roadblock for 1 hour and 45 minutes during which time the child died because of respiratory problems. His life could have been saved had the Israeli occupation forces not prevented the ambulance from taking him to hospital in time.

This way, the Israeli occupation forces are varying their crimes against humanity and against holy shrines together with their symbols in their criminal war against the Palestinian people, violating in this way the principles of human rights, particularly the right to life, the right of belief and all international human rights-related charters, treaties and conventions.

I would be grateful if you could arrange to have this letter distributed as an official document of the fifty-eighth session of the Commission on Human Rights under agenda item 8.

(Signed) Nabil RAMLAWI
Ambassador
Permanent Observer

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COMMISSION ON HUMAN RIGHTS
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Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Letter dated 12 March 2002 from the Counsellor for Political Affairs of the Permanent Mission of the United States of America to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The enclosed document* is intended as an observation related to the report of the Special Rapporteur on the right to education on her mission to the United States, which is to be submitted to the fifty-eighth session of the Commission on Human Rights as document E/CN.4/2002/60/Add.1.

Please process the enclosed as an annex to a Commission on Human Rights document.

(Signed): Cheryl J. SIM
Counsellor for Political Affairs

* Reproduced as received, in the language of submission only.

GE.02-11574 (E) 220302

Annex

The USG welcomes the opportunity to respond to the finalized report of Ms. Katarina Tomasevski, Special Rapporteur (SR) on the Right to Education. The U.S. Department of State has prepared this response with guidance from several agencies including the Department of Education (DOE), the Department of Justice (DOJ) and the Department of Labor (DOL).

The report contains many factual inaccuracies, and numerous statements in strong emotional language that are presented without supporting evidence. The report implies that the problem of inequality in U.S. education has been caused by the lack of U.S. federal government action. In addition, the report pays insufficient attention to the way education is organized in the United States or the consequent roles of federal, state, and local governments in the process of education. Further, the report makes no mention of the hundreds of billions of dollars that the federal government has spent during the past decades through dozens of different approaches to compensatory education. A more accurate analysis would portray inequality as persisting despite federal government action.

The United States Government (USG) offers the following observations:

SECTION I. THE CONTEXT: AFTERMATH OF 11TH SEPTEMBER

Regarding the isolated incidents of hate crimes against Muslim America;s that the Special Rapporteur witnessed during her visit, the USG would like to provide an updated picture of this situation. Widespread violations of civil liberties have not occurred in the United States and civil liberties groups have been closely monitoring the rights of Arab immigrants and Arab and or Muslim Americans detained for questioning. The President and the Department of Justice (DOJ) have made it clear that it is unacceptable to perpetuate any acts of violence against Muslim Americans. The DOJ has been actively prosecuting individuals for hate crimes against Muslim Americans. In addition, many Arab Americans and Muslim Americans have said that they have experienced spontaneous demonstrations of friendliness from Americans, counterbalancing isolated cases of bigotry.

SECTION II. HISTORICAL BACKGROUND AND CURRENT INITIATIVES

The USG plays a significant role in education. The major responsibilities for education (such as funding, curriculum, teacher certification...), however, lie within the states' jurisdiction. Moreover, the Bill of Rights (i.e., the legal foundation of the concept of human rights in this country), which covers political and legal rights, does not refer to education as either a human right, or a responsibility of the federal government.

A. The Heritage of Free Public Education

Religious instruction was a goal of U.S. common schools in the seventeenth and eighteenth centuries. However, we are not aware that this has persisted as a primary goal into the nineteenth century. The sentence, "Some southern States allowed their children to be withdrawn from racially mixed schools," incorrectly implies that parents applied to the state to determine where they could send their child to school. A better way to say this would have been: "Some parents chose to send their children to private schools rather than enroll them in racially mixed public schools."

The SR's discussion on the role of the federal government should have made a clearer distinction between the various parts of the federal government, as roles and attitudes vary considerably between the executive, legislative, and judicial branches. Although states and individual school districts have a primary responsibility for education, the federal government plays an important role in ensuring equal access and promoting educational excellence. Approximately 7 percent of the total national K-12 public education budget is provided by the various agencies of the federal government. The U.S. Department of Education administers the vast majority of these funds. Congress allocates the funds through hundreds of programs that seek to improve education in a variety of ways, such as providing additional resources for schools with high concentration of low-income students. Before 1979, the functions of the Department of Education were performed within the Office of Education in the Department of Health, Education, and Welfare. It is important to note that the federal government played a significant role in education even before the creation of the Department of Education as a separate office. The time-honored and well-accepted roles of the federal government in education include: enforcing civil right laws; providing funds for schools educating the disadvantaged (nearly 10 billion dollars last year); conducting research; gathering statistics; providing incentives for innovation; and providing substantial financial assistance to low and moderate income students so that they may attend college.

B. Changing Administrations, Changing Priorities

For the past decade, the official motto of the Department of Education, emblazoned on all official materials and buildings has been: "Our mission is to provide equal access to education and to promote educational excellence throughout the nation." This motto reflects the realization that focusing on equal access without regard to quality will not solve the problem of inequity. The Special Rapporteur's statement that a well-designed and well-funded education system could solve the problems of schools in inner-city ghettos is simplistic Although the feminization of the teaching profession may create difficulties in dealing with boys, the violence that occurs in schools and communities is a result of a complex interplay of risk factors and the environment. Additionally, the federal government has made a major multi-agency investment in preventing school violence. There are also a number of centers that have been addressing this issue.

The USG would like to clarify that the advocates for leaving the public schools to avoid integration did not represent the mainstream public education system or the government. Also, selection and segregation were not an official or publicly respected goal of education in the 1980s. The vast majority of white children were still enrolled in public schools. Presenting statistics on the actual percentages of students in private schools during the 1970s and 1980s would more accurately reflect the true situation.

The federal and state governments have spent billions of dollars on Title I and other compensatory education programs for low-income children. (Title I, Part A provides assistance to improve the teaching and learning of children in high-poverty schools to enable those children to meet challenging academic content and performance standards. It is the largest elementary and secondary education program in the federal government.) Per-pupil spending in some disadvantaged low-income urban districts is among the highest in the U.S. More funding is not the simple answer, as many evaluations of national compensatory education programs have not been able to show that the additional funds have had clearly positive effects on improving students' educational achievement or other outcomes.

The USG suggests that a reference to the newly released OECD Program for International Student Assessment (PISA) report, "Outcomes of Learning," would be better than the outdated International Adult Literacy Assessment (IALS) data presented in this report. IALS was conducted in 1994, and PISA in 2000. PISA data shows that 12 percent of U.S. 15-year-old students scored at the lowest level one, which is the same as the OECD average. Twelve percent scored at the highest level five, which is better than the OECD average of 9 percent. Germany fared more poorly than the U.S. in this assessment. In addition, summarizing the IALS level-one performance criteria as "barely add two numbers together" is not accurate. Students at level one are able to recognize the main theme of a text, isolate explicitly stated information, and make simple connections between information in the text and everyday life. They are not able to perform the more complex literacy tasks that might be needed to function effectively in today's economy.

C. The First Initiatives of the New Administration

The Bush Administration continues the Education Department's commitment to enforcement of students' constitutional and legal human rights, and this remains one of the Education Department's key missions. As evidenced by the recently passed education bill, the administration has increased spending in education. "Freedom from federal controls" of education is not a thrust of mainstream education reform by any of the governmental, education associations, or respected non-profit education associations of which we are aware. Those in the U.S. who argue for weaker federal influence in local education primarily desire to prevent federal control of local curriculum, and to avoid federal mandates for education improvement that are not accompanied by federal funds.

SECTION III. INTERFACE BETWEEN FOREIGN AND DOMESTIC POLICY

The SR mentions that "Aid conditionally exemplifies the same pattern of problems whether one deals with federal aid to individual States within the United States or with US aid to other countries." We would like to note that the comparison between federal assistance for the constituent states and U.S. foreign aid is inaccurate. U.S. federal assistance to states is vetted through a legislative process in a legislature containing representatives from those states. The U.S. federal government does not have an "aid" relationship with the 50 states.

B. Fiscal ramifications of equal rights for children with disabilities

To the SR's comments that "Such a five-fold increase in the cost of education is the bone of contention in the United States because funding is seen as a zero-sum-game and additional funding for children with disabilities as loss for other children," our response is that the costs of special education is a policy issue not because of the reason stated but because the budgets of many states and school districts are unable to cover the full costs of the program. In discussions leading up to the reauthorization of the Special Education Program (IDEA), Congress is debating the possibility of making special education an entitlement, which would fully fund the program.

D. Whither Education: Free Public Service or Freely Traded Service?

The SR's statement that "Insufficient funding for public education has, domestically and internationally, harmed especially post-compulsory education whose survival as a free public service is at stake" is incorrect. We have not heard U.S. educators say that the future of U.S. post-secondary education is at stake for any reason, including lack of funding. The federal government provides well over 50 billion dollars a year to U.S. post-secondary institutions through capacity-building grants and programs that go directly to universities and also in the forms of grants, loans, and work-study assistance to cover tuition costs for 8.2 million students and parents. Furthermore, in the U.S., public post-secondary education is not free of charge to the students, and has never been considered a "free public service." Parents may choose to send their children to either public or private institutions.

The SR seems to assert that data are not available to measure the quality and costs of U.S. education. This is not accurate. The U.S. Department of Education's National Center for Education Statistics (NCES) is a world leader in the quality, innovation, frequency, and public accessibility of education statistics. NCES' annual publications, "Condition of Education" and "Digest of Education Statistics," contain numerous tables on the very topics listed here: the cost of education, quality of schools, and cost of post-secondary education. (For copies of publications: www.nces.ed.gov.)

SECTION IV. FISCAL ALLOCATIONS FOR PUBLIC EDUCATION

A. Legal Enforcement versus Democratic Decision-Making

Please note that all U.S. states have laws guaranteeing children a free education through secondary school and compels parents to send their children to school between certain ages. School attendance in the U.S. is virtually universal.

In addition, the single largest K-12 federal education program - Title I - attempts to redress the problem being discussed here. Title I provides special additional funds to schools and districts to supplement the education of disadvantaged children. The federal government spends approximately 8 billion dollars a year in this effort.

The footnote by the SR that "The U.S. government holds that the concept of minority does not apply in the United States" is a misstatement. The U.S. government regularly uses the designation "minority" in official documents.

Although the 2000 Digest of Education Statistics is cited for this very surprising figure, "The particular needs of the intake in New York's public schools are impossible due to the funding gap: an annual 40,000 dollars is available in suburban schools but only 4,000 dollars in inner-city ghetto schools," we could not find this figure in that volume, despite a very careful check. Instead, please see the Digest Table 91, entitled, "Revenues and expenditures of public school districts enrolling more than 15,000 students." This table shows the much more likely figure that per pupil expenditure varies from 7,414 dollars in New York City to 9,903 dollars in the upper-middle-class suburb of Yonkers.

B. Localization versus Globalization

The explanation of funding in the U.S. contained in the first two paragraphs in this section is accurate and should help readers understand how disparity arises. The SR should elaborate on how the process of globalization has created greater diversity in local education. As currently written, the discussion of globalization and the new economy seems to be outside the topic of this report.

SECTION V. RACIAL AND GENDER PROFILE OF ECONOMIC EXCLUSION

The paragraph, "The results of the 1950 census presented the country as 89 percent white and 10 percent black; the 2000 census revealed that 12 percent of the people were of South American origin. The term American without a preceding capitalized adjective may well be reserved for WASPS (White Anglo-Saxon Protestants), a term coined by the sociologist Digby Baltzell in 1964," on races and ethnic groups is full of inaccuracies. Please say: 12 percent of the people are of Hispanic (not the same as South American) origin. The term "Hispanic Americans" is preferred over "Latin Americans." The term "American" is not reserved for WASPS and refers to citizens of all races.

The term "minorities" is used to describe groups that individually constitute less than half of the U.S. population, such as Blacks, Asians, Hispanics, and Native Americans. As the SR points out, minorities may indeed constitute the majority of residents in a given school district, county, or state. However, the term "minority" is based upon their representation in the U.S. population as a whole.

The distinction between administrations on this issue by the SR, "Although the previous Administration acknowledged continued racial and ethnic discrimination in education, the new Administration pointed to the need to diminish disparities in learning accomplishments," seems a bit overdrawn. Both the Clinton and the Bush administrations have pointed to the need to diminish disparities in student performance.

A. Coping with Poverty: Mississippi

Although poverty and minority status do tend to be associated with each other, the second paragraph in this section overdraws this association in such a way as to exacerbate the inaccurate stereotype that people from minority groups are mostly poor. For example, even in Jackson, Mississippi, which is classified as one of the nation's "extremely impoverished neighborhoods," only about half of black students are poor. In Jackson, 32 percent of students are eligible for free and reduced price lunch, but 69 percent of the students are black. (See table on child demographics in Craig D. Jerald, "The Urban Picture" at www.edweek.org/sreports/qc98/challenges/tables/urb-t11.htm#mi.) Another good source for more accurate data on the association of poverty, race, and educational attainment is the government's own statistics on children: www.childstats.gov/ac1999/toc.asp.

The sentence, "White children go to private schools, large white-owned farms are supposed to generate funding for public schools through property tax," implies that all or even most white children in Mississippi go to private schools. This unlikely assertion needs a citation.

The majority of black women in Mississippi do not, as the SR mentions, "have a pretty baby while at school and become a grandmother in her thirties." This type of commentary feeds the racist stereotype that black girls are promiscuous.

B. The Cost of Denying the Right to Education: New York City

A reference to statistics from the Third International Math and Science Study (TIMSS) on the actual frequency of serious school crime, and to compare violent crime in the U.S. to that in other countries, may be useful in this section. In TIMSS' nation-wide survey of U.S. 8th graders, 10 percent of students say that physical injury to other students occurs at least weekly in their school. Other nations participating in TIMSS reported equal or higher levels, including Australia, Chile, Israel, and Korea. See TIMSS International Science Report, 1999, page 268, at www.timss.org.

SECTION VI: CONTROL OVER EDUCATION

A. Freedom of Religion

In response to the SR's assertion that "Initially, the separation between Church and State had been interpreted to require public education to be secular. This was subsequently reversed and further change is likely to ensue," the USG is not aware of a Supreme Court decision that reversed the decision that public education should be secular rather than religious. A citation would be useful in this case.

The SR's discussion on the White House Office of Faith-Based and Community Initiatives does not accurately represent the activities of the Office of Faith-Based and Community Initiatives. This office provides information to churches and other faith organizations about programs in the federal government that offer grants or contracts to the public. The Office facilitates inquiries by faith-based organizations in finding out about these opportunities and applying for them on equal footing with non-faith-based organizations. The Office's mandate is NOT to fund the religious activities of these organizations, as the paragraphs seem to imply.

B. Deciding What Children Should Learn: Kansas

Regarding the SR's comment, "It could easily be anticipated that geology or biology could be examined according to globally accepted definitions of what constitutes knowledge and how well it is transmitted to the young," the USG has worked with over 50 nations to develop an assessment of what constitutes important knowledge in biology and geology, and have administered it to their students (see TIMSS International Science Report, 1999, cited above).

SECTION VII: CONCLUSIONS AND RECOMMENDATIONS

The United States has maintained a commitment to safeguarding the rights of children, domestically and internationally. Most parents make decisions to guide the positive development of their children. In instances where parents harm their children, the federal government has instituted the mechanisms for several programs to deal with these issues. Some of these efforts include eliminating exploitative and hazardous forms of child labor and child abuse.

A number of inaccuracies or selected facts in Ms. Tomasevki's report of her Mission to the United States of America demonstrate a lack of balance in reporting on the education system in the United States. We hope that future reports will present a more balanced picture of U.S. schools.

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Agenda item 9

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Note verbale dated 13 March 2002 from the Permanent Mission of Kuwait to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

The Permanent Mission of the State of Kuwait to the United Nations Office and other International Organizations in Geneva presents its compliments to the United Nations High Commissioner for Human Rights and has the honour to enclose herewith the note from the Government of the State of Kuwait in response to the Iraqi explanatory note annexed to the note verbale dated 31 May 2001 from the Permanent Mission of Iraq to the United Nations Office at Geneva addressed to the High Commissioner for Human Rights and published under document E/CN.4/2002/4 dated 10 August 2001.

The Permanent Mission of the State of Kuwait would highly appreciate if the High Commissioner for Human Rights could circulate the enclosed letter* as an official document of the 58th session of the Commission on Human Rights, under item 9 of the agenda entitled "Question of the violation of human rights and fundamental freedoms in any part of the world".

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* Reproduced as received, in the languages of submission only.

ANNEX

Note from the Government of the State of Kuwait in response to the Iraqi explanatory note annexed to the note verbale addressed to the High Commissioner for Human Rights by the Permanent Mission of Iraq (doc. E/CN.4/2002/4)

The Government of the State of Kuwait has examined the explanatory note presented by the Government of Iraq concerning the resolution 2001/14 adopted by the Commission on Human Rights, published under document E/CN.4/2002/4 dated 10/8/2001, and has the honour, in this respect, to assert the following:

1. The note in its whole, is an evident approach by Iraq which it always adopts in facing world criticism. An approach based on fallacies, distortion and selectivity as it tries to undermine and ignore the rights of the Iraqi individual by adopting unfounded justifications. Even worse, these justifications are the means it employs to violate those rights. However, this is an unacceptable behaviour which will impress or deceive no one.

The violations of human rights in Iraq are crystal clear. The Special Rapporteur on the situation of human rights in Iraq has unequivocally affirmed in his reports since 1991 till today, that there are violations of the rights of the Iraqi individual namely torture or cruel, inhuman or degrading treatment or punishment, extrajudicial killings, arbitrary executions, persecution on account of political opinions, ethnicity and religious affiliation, forced population transfers, arbitrary arrest and detention, and lack of fair trial.

He also emphasized that **"nothing can justify serious violations of human rights and fundamental freedoms"** (doc. A/55/294). The United Nations human rights treaty bodies went along with this position by requesting Iraq to fulfil its treaty obligations (i.e. protection and promotion of the rights of the Iraqi individual), following their examination of the reports presented by Iraq concerning its implementation of the provisions of the relevant treaties on human rights.

2. The explanatory note alleges in its first paragraph that the Security Council resolutions mentioned in the resolution of the Commission on Human Rights regarding the situation of human rights in Iraq are not related in any way to the accusations contained in the mentioned resolution. These allegations are unfounded.

Resolutions 686 (1991), 687 (1991) and 1284 (1999) deal with the issue of Kuwaiti and third country nationals detained by Iraq since 1990. This issue is considered part of the mandate of the Special Rapporteur on the situation of human rights in Iraq and it has been affirmed so in the following documents:

(a) The Statement of Mr. Max Van Der Stoel, the former Special Rapporteur on the situation of human rights in Iraq, delivered on 31/3/1999 before the 55th Session of the Commission on Human Rights, in which he reported that **"The Commission on Human Rights**

decided at its session early 1991 to appoint two independent experts to investigate and asses, respectively, the actions of the Iraqi authorities during their occupation of Kuwait and the actions of the Iraqi authorities within Iraq. Professor Walter Kälin of Switzerland reported on the situation of human rights in Kuwait under Iraqi occupation. Following discontinuation of his mandate, I was assigned responsibility to report on the continuing violation of the missing Kuwaiti and third country nationals. This issue thus became part of my mandate in addition to reporting on violations committed by the Government of Iraq".

(b) The former Secretary-General of the United Nations Dr. Boutros Boutros-Ghali states in paragraph 195 of his introduction to a book issued by the United Nations entitled "The United Nations and the Iraq-Kuwait Conflict, 1990-1996" that **"The Commission on Human Rights has made the fate of persons missing as a result of the Gulf conflict part of the mandate of the Special Rapporteur on the situation of human rights in Iraq"** (blue book No. ISBN 92-1 000072-2).

(c) The report of the former Special Rapporteur on the situation of human rights in Iraq presented to the 50th Session of the Commission on Human Rights in 1995, under document 216 of the above-mentioned book, where he states in its paragraph 19 that **"the fate of Kuwaitis and other persons who disappeared during Iraq's occupation of Kuwait forms part of the mandate of the Special Rapporteur as a result of paragraph 4 of Commission resolution 1992/71, ...".**

However, other Security Council resolutions referred to in the resolution of the Commission on Human Rights on the situation of human rights in Iraq in addition to resolution 1284 (1999), deal with the humanitarian situation in Iraq which is the core of the mandate of the Special Rapporteur on the situation of human rights in Iraq.

3. The Iraqi regime is accustomed to follow the policy of procrastination in order to avoid facing its responsibilities and fulfilling its obligations. In the past, it used human beings as shields in order to promote its political agenda and today it is employing technical shields to evade its responsibilities and obligations. It denies the existence of Kuwaiti prisoners of war in Iraq and claims they are missing since the 1991 events (paragraph 7 of the Iraqi explanatory note). Nevertheless, it forgets or claims to have forgotten that an aggressor state is legally bound to investigate the whereabouts of missing persons and is fully responsible for determining their fate.

In this regard, it is necessary to affirm that Kuwaitis and third country nationals are prisoners of war and civilians detained by Iraq. They were arrested by the Iraqi occupation forces then were deported to Iraq and detained there, according to what Iraqi documents unveiled and to the testimonies of prisoners of war who returned from Iraq where they had been detained.

In its Letter dated 3 March 1991 published under two documents (S/22320 & S/22321) addressed to the President of the Security Council and to the Secretary-General of the United Nations, Iraq agreed to fulfil its obligations under resolution 686 (1991), which represents an implied recognition of its responsibilities towards Kuwaitis and third country nationals detained by it.

Iraq also acknowledged the applicability of both Third and Fourth Geneva Conventions on the Treatment of Prisoners of War and Protection of Civilian Persons, on Kuwaiti and third country nationals detained by it upon signing the Riyadh Agreement on 7/3/1991.

The Secretary-General of the United Nations also clearly affirmed that **"It would be helpful if Iraq were to abandon its stance of declaring no knowledge of the whereabouts and fate of the Kuwaiti and third-country nationals who were arrested and deported more then 11 years ago. It must adopt a constructive position of cooperation on the repatriation or return of those persons or their mortal remains"** (doc. S/2001/1196).

The international community remains united on this humanitarian issue and the Security Council members pointed out that it should be maintained on the agenda of the Council without it being politicized (doc. S/2001/1196).

On the basis of what was pointed out hereabove, Iraq seeks political gains out of a humanitarian issue. Iraq has the responsibility to cooperate with the relevant United Nations mechanisms in order to determine the whereabouts and fate of Kuwaitis and third country nationals. If Iraq is sincere then it has to show its good will in this matter.

Prisoners of war and civilians detained by Iraq are not only Kuwaitis but there are other nationals belonging to third countries (Saudi Arabia, Egypt, Iran, Syria, Lebanon, Bahrain, Sultanate of Oman and India). Enclosed herewith an Annex with the total number of prisoners of war and their nationalities as well as a classification by gender and age.

4. The Security Council constantly reaffirmed the responsibility of Iraq in accordance with the International Law, for any losses, damages or injuries deriving from its illegitimate invasion and occupation of Kuwait. However, Iraq is always trying to evade its responsibilities by paying the compensations to which it is legally bound according to the International Law, as mentioned in the penultimate paragraph of its note, claiming that the drafters of the paragraph (on paying compensations) either were unaware of the true state of affairs or pursued political objectives, and justifying that these compensations were unfairly approved to the National Committee for the Missing and Prisoners of War's Affairs by the United Nations Compensation Commission.

But facts prove that the responsibility of Iraq is not only limited to paying compensations to the National Committee for the Missing and Prisoners of War's Affairs, but that it is also responsible for compensating those individuals it still detains and who are entitled, in accordance with the International Law, to claim compensations for the losses they suffered, either after their release or in case they deceased. On those grounds, the Panel of Commissioners of the UNCC recommended, in its report (doc. S/AC.26/1999/24) **"that the Commission's review of this loss element be performed when the Missing are released or the Government of Kuwait determines that they are deceased".**

The Panel's report and recommendations contained in the above-mentioned document confirm the righteousness of the request addressed by the Commission of Human Rights to Iraq to pay the compensations to the families of the prisoners of war detained by Iraq, which

preserves the right of the prisoners of war to compensation for the damages inflicted upon them and their families as a result of the illegitimate act perpetrated by the Iraqi regime by its invasion and occupation of Kuwait. Iraq must bear full responsibility for such acts.

In conclusion, all previous affirmations and contents of documents referred to confirm undoubtedly that Iraq still distorts facts and uses selective methods with the clear aim of deceiving the world by letting everybody believe that it had fulfilled its obligations. However, facts confirm the exact opposite and prove Iraq's bad will and its continuous denial of any cooperation in order to shoulder its responsibility as a result of its illegitimate invasion and occupation of the State of Kuwait.

Prisoners of War and Civilians detained by Iraq as a result of the brutal Iraqi invasion of the State of Kuwait

- Kuwaitis : 572
- Other nationalities : 33

(14 Saudi, 5 Egyptians, 4 Iranians, 4 Syrians, 3 Lebanese, 1 Bahrainee, 1 Omanee, 1 Indian)

- *Gender:*
  - * Males : 598
  - * Females : 7

- *Age: (at time of arrest)*
  - * Under 18 : 42 (7 %)
  - * between 18 & 30 : 411 (68 %)
  - * between 31 & 50 : 136 (22 %)
  - * between 51 & 80 : 16 (3 %)

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, INCLUDING: QUESTION OF HUMAN RIGHTS IN CYPRUS

Letter dated 13 March 2002 from the Permanent Representative of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to transmit herewith the observations of my government pertaining to the judgement of the European Court of Human Rights in the case Cyprus v. Turkey.

I would appreciate if you would have the enclosed observations* circulated as an official document of the fifty-eighth session of the Commission on Human Rights under item 9 (a) of the agenda.

(Signed) Murat SUNGAR
Ambassador
Permanent Representative

* Reproduced as received, in the language of submission only.

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NOTE ON THE JUDGEMENT IN THE CASE OF CYPRUS V. TURKEY

The European Court of Human Rights (ECHR) announced its judgement on 10 May 2001 in the Cyprus v. Turkey case lodged against Turkey by the Greek Cypriot Administration. The following observations can be formulated as a first evaluation of the judgement.

- The judgement ignores the presence of the Turkish Republic of Northern Cyprus (TRNC). The Greek Cypriot administration is considered as the sole legal government of the Island, even though the bi-communal Republic of Cyprus ceased to exist due to the forceful expulsion of the Turkish Cypriots from all the organs of State, usurpation of powers by the Greek Cypriot side, and changes made to the basic Articles of the Constitution contrary to the Treaties which established the Republic of Cyprus. The judgement is based on the idea that Cyprus is a unitary state.

- The approach that ECHR adopted in its judgement is against the fact that there are two separate states in the Island. It contradicts the fact that Turkish and Greek peoples in Cyprus are in equal status and that both peoples have the right to self-determination.

- The ECHR, in its judgement considers Turkey as the sole respondent state for allegations of the Cypriot Administration. The judgement is based on the presumption that the only authority in North Cyprus is Turkey and that Turkey, because of the "presence of Turkish troops", exercises "effective control" in North Cyprus and consequently is responsible for all human rights violations in the Turkish Republic of Northern Cyprus (TRNC). The court failed to examine the issue whether the "Turkish troops", whose presence is for purposes of security of the Turkish Cypriots, are in any way involved in the government of TRNC. The main fallacy of the Court judgement is, however, on the issue of State responsibility, expressed in para 78, that "any other finding" on the issue of responsibility "would result in a regrettable vacuum in the system of human-rights protection in the territory in question". The Court was clearly influenced by the submission that, unless Turkey is held to be accountable, no State would be accountable in North Cyprus, with the result that the system of the Convention would be inoperative in that area. This led to findings that every violation, whatever its nature and whoever perpetrated it, is imputable, without more, to Turkey. This does

not seem to be a convincing basis for the Court's approach to the critical question of State responsibility.

The judgement ignores the main parameters agreed upon by the parties during the long standing peace process under the auspices of the UN, such as the bizonality principle, the existence in Cyprus of two sides, the fact that one side does not represent the other.

- The parts of the judgement relating to ownership disregard the bizonality principle, which is one of the main parameters of the Cyprus issue. The restitution which was the main thesis of the Greek Cypriot side up to now is being adopted . The Court completely ignored the 1975 Vienna Population Exchange agreement, which was implemented under UN auspices, as a result of which appoximately 65,000 Turkish Cypriots then in the South moved to the safety of the Turkish Cypriot North. Similarly, Greek Cypriots then in the North, voluntarily moved to the South. The Court also ignored the fact that because of the long time lapse, expropriations carried out by the Turkish Cypriot authorities in the North and Greek Cypriot authorites in the South, and because of the transformation in the physical and the human environment in both the Turkish Cypriot side and the Greek Cypriot side, the state of many properties that are subject to exchange have changed so much that the idea of restitution is impossible to implement in practice. It would be unrealistic and impracticable to reverse the present realities and to return to the status quo ante, as the Court judgement seems to suggest. The property issue, solution of which depends on a political settlement, which may involve global exchange of Greek Cypriot properties in the North with Turkish Cypriot properties in the South, and/or compensation if need be, cannot be adjudged in a manner detached form the present realities in Cyprus, as the Court judgement seems to suggest.

- It is obvious that the judgement of the ECHR, is consistent with EU's approach which presents the political disputes to which it is not directly involved, as human rights issues and by way of Court judgements seek solutions to be consistent with its approaches.

The core of the Cyprus problem is the ethnic cleansing that the Turkish Cypriots were subjected to between 1963-1974. The principal worry of the Turkish Cypriots is the security issue. Naturally the Turkish Cypriots do not want to live again the circumstances that led to the events between 1963-1974 and the violence and genocide applied by the Greeks during this period.

As it was stated in September 1999 by the former president of the United States, Mr Clinton, in Cyprus it is not possible to return to the circumstances of Cyprus before 1974.

However, the judgement of the ECHR has such a meaning. The judgement as a whole violates the principle of the bizonality. By one of its main elements which is the restitution, the dissolution of the Turkish community in the Greek Cypriots is being aimed and the events before 1974 are invited.

The only realistic solution in Cyprus is the confederation. As Turkey underlined until now, it is not possible to reach a lasting solution ignoring the realities of the island, the past sad experiences and the balances in Cyprus. The bizonality in Cyprus is essential. The main parameter of the UN process and the core of the issue is the voluntarily exchange of populations in 1975. In addition, the global transfer of the property by way of compensation the Turkish side is arguing, is an issue present in the 1992 "Set of Ideas" as well.

In Cyprus v. Turkey case the ECHR rendered a judgement on all aspects of the Cyprus problem which in essence is a political issue, and accordingly deepened the gap between the legal parameters and the reality.

However, these issues are within the scope of the goodwill mission of the UN. The fact that the judgement is void of any legal basis and that it has a political nature is a sign that the approach of the ECHR is political. With its attitude towards the judgement the Greek side demonstrated that it has no will to reach a solution by way of negotiations.

In the light of the observations above, from the Turkish point of view the judgment has no applicability. However, it contains some relevant points which should be underlined. The judgement recognizes the existence of a de facto authority and entity in the island and stresses the independence of its courts. It further states, with reference to the TRNC Constitution that the said courts are established by law. Through the judgement, the ECHR accepts also that there are domestic remedies avaible for both Cypriot Turks and Greek community in Karpas (TRNC).